

The Gazette



of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

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No. 33] NEW DELHI, MONDAY, JANUARY 20, 1958/PAUSA 30, 1879

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ELECTION COMMISSION, INDIA

NOTIFICATION

*New Delhi-2, the 8th January 1958/18th Pausa 1879 Saka*

S.R.O. 268.—Whereas the election of Shri V. N. Swamy as a member of the House of the People from the Chanda Constituency of that House was called in question by an election petition presented under Part VI of the Representation of the People Act, 1951 (43 of 1951) by Shri Lal Sham Shah, son of Lal Bhagwan Shah, Cultivator, Panabaras, Tahsil Balod, District Durg, (Madhya Pradesh);

And whereas, the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, WARDHA

Presided over by the Member, Shri T. R. Gosewade, B.A., LL.B., (District and Sessions Judge, Wardha).

ELECTION PETITION No. 466 OF 1957

*Petitioner:* Lal Sham Shah s/o Lal Bhagwan Shah, aged about 33 years, cultivator, resident of Panabaras, Tahsil Balod, District Durg (Madhya Pradesh).

*Versus*

*Respondent:* Shri V. N. Swamy, aged 50 years, Advocate, Chanda, Tahsil and District Chanda.

COPY OF ORDER

(delivered on this 7th day of December, 1957)

This is an election petition presented under section 81 of the Representation of the People Act, 1951, (Act No. 43 of 1951), hereinafter referred to as the Act, against the respondent, the returned candidate, by an elector and a candidate who contested the election in question, as a member to the House of the People from Chanda Parliamentary constituency.

2. An order was passed in these proceedings on 30th August 1957 on some preliminary issues and that order given in annexure A, enclosed herewith, forms part of this final order.

3. There was a straight fight between the petitioner, an independent candidate, whose symbol for the election was "bow and arrow" and the respondent who contested as a nominee of the Congress party and whose symbol was "two bullocks with yoke on". The polling took place on 25th February 1957, 6th March 1957 and 11th March 1957; the counting took place on 23rd March 1957; and the result was declared on 23rd March 1957. The petitioner secured 97,973 votes while the respondent secured 1,19,949 votes and thus the respondent was declared elected by the majority of 21,976 votes. These facts are undisputed.

4. It is further admitted by the respondent that he is a partner of the C.P. Development Company and a Director of the Ballarshah Timber Syndicate Ltd. It is also admitted by the respondent that the Ballarshah Timber Syndicate Ltd., had entered into a forest contract for purchase and extraction of hard-woods from Ex-Zamindar of Aheri in 1949 and that contract still subsists and it is being continued by the State of Bombay. The respondent also admitted that the Ballarshah Timber Syndicate had entered into some contracts in 1953 and 1954 with the Southern Railway for supply of sleepers.

5. Petitioner has claimed in this election petition two reliefs. He firstly claims a declaration that the election of the respondent as a member of the House of the People from Chanda Parliamentary constituency be declared void and, secondly, he claims a further declaration that he has been elected in the election in question. The several grounds on which the petitioner has challenged the election in question and which have been denied by the respondent will be evident from the issues framed in the case.

6. The issues with my findings thereon are given below:—

Issues	Findings
1 (a) Whether the respondent's nomination was wrongly accepted by the Returning Officer as alleged by the petitioner ?	1(a) No.
(b) Whether no objection was made by the petitioner or any other else to the respondents nomination ? If so, to what effect ?	(b) I part—No. II part—Nomination paper must be deemed to have been properly accepted.
(a) Whether the respondent gets a remuneration of Rs. 1200/- per month as managing agent of the C. P. Development Company of the Ballarshah Timber Syndicate Ltd. ?	2(a) No; he has not been getting any remuneration as managing agent of B.T.S., though managing agency agreement provided for payment of Rs. 1200/- per month to the C. P. Development Company.
(b) Whether some contracts made by the Ballarshah Timber Syndicate in 1953 and 1954 with the Southern Railway were fully discharged by June 1956 and no such contracts existed on the date of election ?	(b) I part—Yes, by 5-1-1957. II part—No.
(c) Whether the said syndicate had entered into lease agreement with the Ex-Zamindar of Aheri Estate and whether the said agreement was being continued by the State of Madhya Pradesh and after the States Reorganisation Act of 1956 by the State of Bombay as successor to the ex-proprietor ?	(c) I part—Yes. II part—Yes; but these facts did not disqualify the respondent for the election in question.
(d) Whether the respondent No. 1 was disqualified to be a candidate on the ground that he was interested as a partner of the C.P. Development Company and as a managing agent of the Ballarshah Timber Syndicate in contracts with the Government ?	(d) No, because no such contracts subsisted on the date of nomination or on the date of election or on any date between those two dates.
3 (a) Whether the electoral rolls were not properly prepared and hundreds of eligible voters were not included in the said rolls ?	3(a) Does not arise.
(b) Whether this constitutes any ground for calling in question the election of the respondent ?	(b) Does not arise.
4 (a) Whether the respondent had engaged several persons to collect the ballot papers outside the booths who used to ask the voters not to put their ballot papers into the box and to bring them outside ?	4(a) No.
(b) Whether the ballot papers were collected and purchased outside the booths ?	(b) No.

Issues	Findings
(c) Whether one of the trusted voters of the respondent used to go inside with those ballot papers and they were put into the ballot box of respondent ?	(c) No.
(d) Whether at Thanegaon, Wansoda and Maroda in the Armori Legislative Assembly Constituency it was noticed at the time of counting that several ballot papers were found in one fold as if put in by one person who collected them ?	(d) At some polling stations ballot papers from the respondent's boxes were found in folds.
(e) Whether at Ballarpur booth No. 4 it was noticed on 25-2-1957 that one Hukum was bringing out his vote for sale to the agent of respondent ?	(e) No. Hukum was found to have removed a ballot paper from Ballarpur polling station booth No. 3.
5 (a) Whether on 24-2-1957 the respondent promised to give Rs. 300/- as donation for construction of the School building at Manora ?	5(a) No.
(b) Whether the said donation was pronounced by respondent with a view to induce voters in that locality, who were interested in the school building, to vote in favour of respondent ?	(b) No.
6 Whether one Anandrao Gawande, a canvasser for respondent, distributed liquor to the voters on 25-2-1957 ?	6. No.
7 (a) Whether at Gondpuri Nos. 1 and 2, one Tulsiram son of Bhadu Meshram Gond was beaten by Congress workers on 25-2-1957 ?	7(a) Not proved.
(b) Whether said Tulsiram was polling agent of the petitioner ?	7 (b) Not proved.
8 Whether two rickshas Nos. 54 and 59 belonging to Shri Chimurkar of Chanda and respondent's car were used for carrying voters to the polling station on 25-2-1957 at Ballarpur ?	8. Not proved.
9 (a) Whether on 21-2-1957 three police officers of Seraj Police Station abused Paikan and Maroti Warpatkar and beat them at Sangola, and detained them on the way at Antagarh ?	9(a) Not proved.
(b) Whether they were released by the police officer on the condition that they would not again canvass and work against Congress candidates ?	(b) Not proved.
(c) If so, to what effect ?	(c) No effect.
10 (a) Whether on 23-2-1957 Paikan, Maroti Warpatkar and Ramchandra Dharmaji were beaten by the police officers when they were going for propaganda work to attend the polling booth on behalf of the petitioner ?	10(a) Not proved.
(b) Whether these canvassers of the petitioner were put in lock-up at Siraj Police Station.	(b) It is not proved that they were made a petitioner's canvassers. But they were detained at Siraj police station for offence u/s 353 of the I.P. Code.
11 (a) Whether in February 1957, Anandrao Gawande, Chilke etc., the canvassers of respondent, made a propaganda in villages coming under serial No. 52, Chichpalli, Gondsawari etc., that the petitioner does not belong to Gond tribe and "Shah" stands for Mohamedan ?	11(a) No.
(b) Whether the supporters of the respondent No. 1 misrepresented and told the tribal women voters that there was no polling for women on 6-3-1957 and their polling would be on the next day at the polling stations Chichpalli, Gondsawari etc. ?	(b) Not proved.
(c) Whether this was done in furtherance of the prospects of the respondent and at his instance ?	(c) No.

Issues	Findings
12 (a) Whether the respondent made payments and promises to the Scheduled Caste Federation and its leader Shri Rajabhau Khobragade and thus induced the members of the Federation to vote for him ?	12 (a) No.
(b) Whether Shri Khobragade and other leaders of Scheduled Caste Federation requested the Scheduled Caste voters to vote for the respondent ?	(b) No.
13 (a) Whether the acceptance of nomination of Shri Kannamwar and his contest for Assembly seat created a sort of political influence upon the electors' mind ?	13 (a) No.
(b) Whether any of the electors were made to vote for Shri Kannamwar and whether the same electors voted for the respondent ?	(b) Not proved
(c) Whether this has materially affected the result of the election ?	(c) No.
14 (a) Whether at Kohragaon at the eve of the election Rs. 600/- were paid in cash by Shri Tadurwar on his own behalf and also on behalf of the respondent for construction of school building ?	14 (a) Not proved.
(b) Whether this donation was used as a subtle device to conceal bribery and whether it was intended to induce voters in that locality to vote for the respondent ?	(b) Not proved.
15 Whether on 11-3-1957 motor cars were used on behalf of the respondent for bringing voters at polling stations Nos. 1 and 2 at Desaiaganj ?	15. No.
16 (a) Whether Pandurang Shrihari Hemke and Raghunath Vithoba Sorte are Government servants ?	16 (a) No.
(b) Whether they worked for Congress candidates at polling station Nos. 20 and 21 ?	(b) Not proved.
(c) Whether their canvassing was calculated to influence rustic voters of the locality ?	(c) Does not arise.
(d) Whether on 10-3-1957 Tadurwar on his behalf and on behalf of the respondent paid Rs. 150 to Dhimar Samaj for purchase of a petromax etc., for securing their votes ?	(d) Not proved.
(e) Whether the members of the Dhimar Samaj were thus induced to vote for respondent ?	(e) Not proved.
17 (a) Whether Congress workers made propaganda on the day of polling that military force was coming at Shegaon ?	17 (a) Not proved.
(b) Whether for that reason there was a very poor poll at Shegaon Polling Station ?	(b) Not proved.
(c) Whether the canvassers of the respondent misrepresented and told the voters that due to rains there would be no poll on 11-3-1957 ?	(c) Not proved.
(d) Whether this type of propaganda was made with the intention to induce the voters not to vote at Shegaon Polling Station	(d) Not proved.
18 Whether at Ghotsur Shri Gaddamwar misrepresented and told the voters that if they voted for Bow and Arrow they would be deemed to be war-minded and would be sent to War ?	18. No.
19 Whether at Yella a motor car was used by Congress workers for providing conveyance to the voters ?	19. Does not arise.

Issues

Findings

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| <p>20 (a) Whether Forest Guard of Angara visited the village Nawezari on 7-3-1957 and obstructed canvassing of the canvassers of the petitioner ?</p> <p>(b) Whether the said Forest Guard asked Maji son of Bhosa Gond and others to vote for Congress ?</p> <p>(c) Whether he threatened that if they did not cast their votes in favour of Congress candidates he would see that they were involved in forest cases ?</p> <p>(d) Whether these allegations constitute any ground for interfering with the respondent's election ?</p> | <p>20 (a) No.</p> <p>(b) No.</p> <p>(c) No.</p> <p>(d) No.</p>  |
| <p>21 Whether at Malewada misunderstanding and misrepresentation were made by Shri Narote by telling the people that the petitioner does not belong to Gond community and that the petitioner was said to be contesting the election to bring British Rule in India and to get back his Zamindari ?</p>  | <p>21. No.</p>  |
| <p>22 (a) Whether Dina Ketu Ramteke, Tribal Welfare School Teacher, Malwada, worked and canvassed to secure votes for the respondent ?</p> <p>(b) Whether these facts are relevant for the decision of the election petition ?</p>   | <p>22 (a) Not proved.</p> <p>(b) No.</p>  |
| <p>23 Whether Shri Ganguwar pleader paid Rs. 10 to Shri Newsu son of Dhundsu Uikay of Murmari as illegal gratification to work for Congress candidate ?</p>  | <p>23. Not proved.</p>  |
| <p>24 (a) Whether during the last General Elections, village Palapundi was included in the polling station Khobramendha ?</p> <p>(b) Whether in the pronouncement made by village Kotwal Thushya, there was no mention of the name of the polling station ?</p> <p>(c) Whether for that reason the voters went to Khobramenda and they were told that they should go to Malewada and whether the voters got disgusted and they did not turn up for voting ?</p> <p>(d) If so, to what effect ?</p>                                       | <p>24 (a) Not proved.</p> <p>(b) Not proved.</p> <p>(c) Not proved.</p> <p>(d) Not proved.</p>  |
| <p>25 (a) Whether Bhajan Urkuda Masram is the police patil of Kulkuli ?</p> <p>(b) Whether he is a Government servant ?</p> <p>(c) Whether he worked and canvassed and secured votes for the respondent ?</p> <p>(d) Whether he acted as a polling agent for the respondent at Kulkuli polling station ?</p> <p>(e) Whether he helped in furtherance of the prospects of the election the respondent ?</p>   | <p>25 (a) Not proved.</p> <p>(b) Not proved.</p> <p>(c) Not proved.</p> <p>(d) Not proved.</p> <p>(e) Not proved.</p>                 |
| <p>26 Whether conveyances were arranged to bring the voters at polling station Wadgaon on behalf of the Congress candidates ?</p>  | <p>26. No.</p>  |
| <p>27 (a) Whether Rashid Patel of Nanhi was a canvasser of the respondent ?</p> <p>(b) Whether he paid Rs. 20 to Budhaji Madavi on 9th March 1957 at Kurkheda and assured him to pay Rs. 80 more at Malewada on 10th March 1957 ?</p> <p>(c) Whether this amount was given to Budhaji so that he should refrain from canvassing and from working for the petitioner ?</p>  | <p>27 (a) Rashid Patel voluntarily worked as a canvasser for the respondent.</p> <p>(b) I part No.<br/>II part No.</p> <p>(c) No.</p> |

Issues	Findings
<p>28 (a) Whether Mohammadkha Pathan and Mohamad Shiraj of Gadchiroli were canvassers of respondent ?</p> <p>(b) Whether they told the voters who were to cast their votes at Pendri polling station that due to rains the polling was cancelled ; and whether they thus misrepresented with an intention to keep the voters back ?</p> <p>(c) Whether a few voters were dragged to the polling station by the Congress supporters and they were threatening that if they did not vote for the Congress there would be danger to their lives ?</p>	<p>(a) Not proved.</p> <p>(b) Not proved.</p> <p>(c) Not proved.</p>
<p>29 Whether at Talodhi-Mokasa Congress posters were seen on the election day within the prohibited area and whether they were destroyed subsequently during the polling hours ?</p>	<p>29. Yes, as soon as a Congress poster was seen at Talodhi-Mokasa within the prohibited area, it was removed and it did not materially affect the election.</p>
<p>30 (a) Whether the polling agent of respondent, namely, Chambru of Talodhi-Mokasa accompanied the voters to the polling booths ?</p> <p>(b) Whether this fact is relevant for the decision of the election petition ?</p>	<p>30 (a). Does not arise for decision.</p> <p>(b) Does not arise for decision.</p>
<p>31 (a) Whether the respondent lodged a complaint against Shri Vishweshwarrao, an active supporter and election agent of the petitioner, with the D., S. P., Chanda ?</p> <p>(b) Whether that complaint was false ?</p> <p>(c) Whether the respondent asked for police force at Ahiri, Sironcha and other places ?</p> <p>(d) Whether the respondent tried to defame the petitioner and arrest his progress by these methods of creating a feeling against him and terror in the minds of voters ?</p>	<p>31 (a) Yes, with District Magistrate.</p> <p>(b) Does not arise as no action was taken on the complaint.</p> <p>(c) Yes, but it was not sent.</p> <p>(d) Does not arise.</p>
<p>32 (a) Whether Shri M. S. Kannamwar announced at Kurkheda on 9th March 1957 and at Chamorshi on 10th March 1957 that the petitioner wanted to establish a Gondi Rajya and the voters were asked to verify before voting whether in fact the petitioner was a Gond ?</p> <p>(b) If so, to what effect ?</p>	<p>32 (a) I part No. II part No.</p> <p>(b) Does not arise.</p>
<p>33 (a) Whether Shri Rajabhau Khobragade requested the members of the Scheduled Caste through pamphlets not to vote for any candidate of Lok Sabha and whether his brother Shrihari Khobragade helped him in this matter ?</p> <p>(b) If so, to what effect ?</p>	<p>33 (a) I part Yes. II part Yes.</p>
<p>34 (a) Whether Shri Khobragade demanded Rs. 25,000 from the petitioner for his own election expenses and whether the petitioner refused to give this amount ?</p> <p>(b) Whether Shri Khobragade made a propaganda that the petitioner has deceived the Scheduled Caste Federation and thus created misunderstanding amongst the voters ?</p>	<p>(b) No effect.</p> <p>34 (a) I part No. II part does not arise.</p> <p>(b) Barrister Khobragade did not make such propaganda.</p>
<p>35 (a) Whether the statements were issued by Shri R. W. Kathade and Shri Wasekar on behalf of Congress that Shri J. B. Salve has filled in his nomination paper from Chanda Parliamentary constituency as a dummy candidate for the petitioner and he has been expelled from the Congress ?</p> <p>(b) Whether these statements were false and defamatory and whether they were calculated to prejudice the general opinion of voters against Shri Salve and to affect the prospects of the petitioner's election ?</p>	<p>35 (a) I part No. II part Yes, by Shri Kathade.</p> <p>(b) I part No. II part No.</p>

Issues	Findings
36 (a) Whether at the time of counting of votes, several ballot papers were folded together in one ?	36 (a) Yes.
(b) Whether such votes were challenged before the Returning Officer ?	(b) Yes.
(c) Whether the Returning Officer cancelled some of such votes and later did not do so ?	(c) Yes, he cancelled all such ballot papers which appeared to be folded together.
(d) If so, to what effect ?	(d) No effect.
37 Whether the Head-Master of the Janapada Sabha School canvassed for the respondent and utilised the machinery of the school for the purpose ?	37 Not proved.
38 (a) Whether Shri Yadeo Sahukar accompanied the voters inside the polling booth at Talodhi Mokasa and canvassed within the prohibited area ?	38 (a) No.
(b) Whether he asked one Naktu voter to tell himself as "Waktya" ?	(b) No.
39 Whether the posters of "Two bullocks with yoke on" were seen within 100 yards of the polling booth on the election date at Talodhi Mokasa ?	39. Finding is the same as on issue No. 29.
40 (a) Whether the list of polling stations was published very late only a week before the actual day of polling ?	40(a) No; its publication was not very late.
(b) Whether by the late publication of the list the voters were misguided and polling agents could not be appointed in time ?	(b) No.
(c) Whether this has materially affected the result of the election ?	(c) No.
41 (a) Whether a printed pamphlet dated 20-2-57 issued by Shri R. W. Kathade was widely circulated in the Chanda Parliamentary Constituency ?	41(a) Yes.
(b) Whether the said pamphlets contained false statements and whether they were calculated to misguide and misrepresent the voters with an intention to induce them to vote for the respondent ?	(b) No.
42 (a) Whether the pamphlets in the name of Shri Kirtimantrao were published and circulated throughout the constituency by the Congress canvassers to use his influence for the election of the respondent ?	42(a) Yes.
(b) Whether any fraud was practised thereby for the furtherance of the prospects of the respondent's election ?	(b) No.
43 (a) Whether the respondent along with other congress candidates published and circulated a pamphlet contending thereby that the respondent is a representative of late Mahatma Gandhi and Shri Jawaharlal Nehru ?	43 (a) I part—Pamphlet Bx. A-23 was published and circulated. II part—No.
(b) Whether the names of these national personalities were used to influence the voters to induce them to vote for the respondent ?	(b) Names of Congress leaders were used but not corruptly.
(c) If so, whether it was legitimate election propaganda ?	(c) Yes.
44 (a) Whether a pamphlet was issued by several congress workers to solicit votes from class of weavers as alleged by the petitioner ?	44 (a) Yes.
(b) Whether the pamphlet was circulated in the whole constituency by the canvassers of the respondent ?	(b) Distributed at Chanda only.
(c) Whether the said pamphlet contained offers of illegal gratifications calculated to induce the voters corruptly ?	(c) No.

## Issues

## Findings

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| <p>45 (a) Whether the distribution of a series of pamphlets with the headings "what Congress has achieved and what it promises to do in future" throughout the Chanda Parliamentary Constituency was done with a corrupt motive that whatever is done by the Government, Parliament and Legislature was done by the Congress Organization itself ?</p> <p>(b) Whether assurances were given in these pamphlets that several beneficial schemes would be carried out for the sake of voters in case they voted for the Congress ?</p> <p>(c) Whether this propaganda amounted to corrupt practice of bribery, undue influence and misrepresentation ?</p> <p>46 (a) Whether the respondent has submitted a false return of election expenses ?</p> <p>(b) Whether the respondent spent over Rs. 50,000 in connection with the election in question ?</p> <p>(c) Whether the respondent has thus incurred disqualification to be a member of the House of the People</p> <p>47 (a) Whether the election of the respondent has been procured by any corrupt practices and illegalities ?</p> <p>If so, by which ?</p> <p>(b) Whether the result of the election has been materially affected by any corrupt practices ?</p> <p>If so, by which ?</p> <p>(c) Whether the election of the respondent is void ?</p> <p>(d) Whether the petitioner should be declared elected in place of the respondent ?</p> <p>(e) Whether the petitioner is entitled to any relief and costs ?</p> | <p>45 (a) No; there was no corrupt motive in the distribution of these leaflets and it was legitimate political propaganda regarding public policy and promise of public action.</p> <p>(b) Yes.</p> <p>(c) No; it did not amount to any corrupt practice.</p> <p>46 (a) No.</p> <p>(b) No. It is not proved that the respondent spent more than what is stated in his return of election expenses.</p> <p>(c) No.</p> <p>47 (a) I Part—No. The respondent's election was not procured by any corrupt practice or illegality.</p> <p>II part—Does not arise.</p> <p>(b) I Part—No. ;</p> <p>II part—Does not arise.</p> <p>(c) No.</p> <p>(d) No.</p> <p>(e) No.</p> |
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*Reasons for the findings*

7. Before proceeding to examine the issues, the evidence and the material on record, it is necessary to state the principles which will be applied to the facts of this case in order to decide the matters in issue. The first of those principles is that the general rule is well settled that the statutory requirements of the election law must be strictly observed and that an election contest is not an action at law or suit in enquiry but it is a purely statutory proceeding unknown to the common law and that the Court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of law. Besides, it is always to be borne in mind that through the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. These principles are laid down in *Jagan Nath v. Jaswant Singh* (A.I.R. 1954 S.C. 210).

8. It is also necessary to emphasise, as laid down by the Privy Council in *Punjab Co-operative Bank Ltd., Amritsar v. Income-tax Officer, Lahore* (A.I.R. 1940 P.C. 230) and by the Supreme Court in *Pratap Singh v. Shri Krishna Gupta* (A.I.R. 1956 S.C. 140) that the tendency of the Courts towards technicality is to be deprecated and it is the substance that counts and must take precedence over mere form. Some rules are vital and go to the root of the matter and they cannot be broken; while others are only directory and a breach of them can be overlooked, provided there is substantial compliance of the rules read as a whole and provided no prejudice ensues. The Supreme Court has further laid down in that case that when the Legislature does not itself state which is which, judges must determine the matter and exercising a nice discrimination, sort out one class from the other along broad based, commonsense lines.

9. It is further necessary to bear in mind that the standard of proof required in the matter of corrupt practice is the same as that in a criminal charge. The burden to prove allegations of corrupt practice is on the petitioner and the benefit of doubt should go to the respondent. Thus, though an election petition has to be tried in accordance with the procedure applicable to civil suits, the standard of proof required is the standard applicable to criminal cases. In other words, the corrupt practice must be proved beyond any reasonable doubt and the benefit of doubt must go to the respondent.

10. This view receives support from *Dr. K. N. Gairola v. Gangadhar Maithani and others* (8 E.L.R. 105), *Devasharan Sinha v. Sheo Mahadev Prasad* (10 E.L.R. 461) and *Mast Ram v. S. Iqbal Singh and others* (12 E.L.R. 34). Even in *Abdul Rouf v. Makhtar Ali* (2 E.L.R. 340) and *Desai Basawarai v. Dasankop Hasansab* (4 E.L.R. 380), relied upon by the learned counsel of the petitioner, it is stated that the inquiry into corrupt practices is of a quasi-criminal character and strict proof is to be demanded of the person bringing the charge to prove his case beyond all reasonable doubt. It is, however, observed in 2 E.L.R. 340, that the person charged with such corrupt practice is not fully exonerated from producing evidence, specially of facts within his special knowledge, as he is bound to do under the provisions of section 106 of the Indian Evidence Act. Besides, in 4 E.L.R. 380 it is stated that an election inquiry allows the respondent to be examined and cross-examined on oath and while deciding whether the allegations of the petitioner are proved beyond reasonable doubt, or not, the evidence of the respondent on oath must also be considered. In my opinion, these rules relating to the question of proof are sound and must be followed while deciding this case.

11. *Issues No. 1 (a) and (b).*—In this connection it is first necessary to note that in paragraph (2) of the election petition there is a bald statement that the respondent also filed and filled in his nomination paper which was also accepted by the Returning Officer, though wrongly. It is not thus stated in the election petition as to on what ground the Returning Officer wrongly accepted the respondent's nomination paper. Subsequently, however, in his statement of particulars dated 25th September 1957, the petitioner stated that the respondent's nomination was wrongly accepted by the Returning Officer as he held an interest in the contract of supply of sleepers with the Union of India and was thus disqualified under section 7(d) of the Act.

12. But it is not stated in the election petition whether any objection was raised by any person before the Returning Officer to the nomination paper filed by the respondent. The petitioner, however, in his affidavit of reply dated 1st October 1957 to the interroatories served for his examination, stated in answers to interrogatories nos. 1 and 2 that although he himself, R. P. Tekam, his agent appointed for scrutiny of nomination, and Shri Vishweshwarrao, his election agent, were present before the Returning Officer, Chanda, at the time of scrutiny of nomination papers including that of the respondent, none of them raised any objection to the nomination of the respondent.

13. Thus, in the absence of any objection before the Returning Officer to the nomination of the respondent, there was no necessity for enquiry on the part of the Returning Officer, if he found on the face of the nomination paper that there was no defect in it and it was valid in all respects. The fact, therefore, that the Returning Officer accepted the nomination paper of the respondent and included his name in the list of validly nominated candidates (*vide* Ex. R-3) indicates that on the face of the nomination paper there was no defect of any kind mentioned in sub-section 2 of section 36 of the Act. Consequently, there was no other alternative for the Returning Officer but to accept the nomination paper of the respondent.

14. This view receives support from the decision of the Supreme Court in *Durga Shankar v. Raghuraj Singh* (A.I.R. 1954 S.C. 520) in which it is laid down that if the want of qualification of a candidate does not appear on the face of the nomination paper or of the electoral roll, but is a matter which could be established only by evidence, an enquiry at the stage of scrutiny of the nomination papers is required under the Act only if there is any objection to the nomination. It is further laid down therein by the Supreme Court that the Returning Officer is then bound to make such enquiry as he thinks proper on the result of which either he can accept or reject the nomination; but when the candidate appears to be properly qualified on the face of the electoral roll and the nomination paper and no objection is raised to his nomination, the Returning Officer has no other alternative but to accept the nomination.

15. This point is further clarified in that case by the Supreme Court by stating that it would have been an improper acceptance, if the want of qualification was apparent on the electoral roll itself or on the face of the nomination paper and the Returning Officer overlooked that defect or if any objection was raised and inquiry made as to the absence of qualification in the candidate and the Returning Officer came to a wrong conclusion on the materials placed before him. As further laid down in that case, when neither of these things happened, the acceptance of the nomination by the Returning Officer must be deemed to be a proper acceptance.

16. It is, however, also laid down by the Supreme Court that the acceptance of the nomination by the Returning Officer is certainly not final and the Election Tribunal may, on evidence placed before it, come to a finding that the candidate was not qualified at all. But as further observed by the Supreme Court, the election should in that case be held to be void on the ground of the constitutional disqualification of the candidate and not on the ground that his nomination was improperly accepted by the Returning Officer; and the expression "non-compliance with the provisions of the constitution" is sufficiently wide to cover such cases where the question is not one of improper acceptance or rejection of the nomination by the Returning Officer, but there is a fundamental disability of the candidate to stand for election at all.

17. Thus, in view of the fact of this case and the authoritative decision of the Supreme Court, referred to above, it is clear that the respondent's nomination was not wrongly accepted by the Returning Officer as alleged by the petitioner and I find accordingly.

18. *Issues nos. 2(a) to 2(d).*—These issues relate to the alleged disqualification of the respondent for being chosen as a member of the House of the People. The grounds relating to this point are stated in para (3) (i) of the election petition. The said grounds are with reference to section 7(d) of the Act which lays down as follows:

"A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State—(d) if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government."

The expression "appropriate Government" as defined in section 9(1)(a) of the Act means, in relation to any disqualification for being chosen as or for being a member of either House of Parliament, the Central Government, and in relation to any disqualification for being chosen as or for being a member of the Legislative Assembly or Legislative Council of a State, the State Government.

19. Thus, in view of these provisions of law regarding disqualifications for membership of Parliament or of State Legislature, it is necessary to consider and determine the question whether the respondent has any share or interest in a contract for the supply of goods to or for the execution of any work or performance of any service undertaken by, the Central Government. Another important question which, however, arises in this connection is as to what is the relevant date or what are the relevant dates for the purpose of disqualification mentioned in section 7(d) of the Act. In this matter it is pertinent to note that the process of choosing really begins from the date when under sub-section (1) of section 33 of the Act each candidate delivers to the Returning Officer a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer, to the date when under section 67-A of the Act, a candidate is declared by the Returning Officer to be elected and when that date becomes the date of the election of that candidate.

20. As has been laid down by the Supreme Court in *Ponnuswami, v. Returning Officer, Namakkal* (I.E.L.R. 133), the word "election" has by long usage acquired both a wide and a narrow meaning. In a narrow sense it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling, or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected and it is in this wide sense that the word is used in part XV of the Constitution in which Article 329(b) occurs. That decision was followed in *Hari Vishnu Kamath v. Ahmad Ishaque* (10 E.L.R. 216) in which it is observed that the word "election" in Article 329(b) is used in a comprehensive sense as including the entire process of election commencing with the issue of the notification and terminating with the declaration of election of a candidate. In view of these authoritative and binding decisions, it is clear that so far as the question of disqualification for being chosen as a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State is concerned, the relevant period for purposes of section 7 of the Act begins from the date of presentation of nomination paper and ends on the date when the result of election is declared.

21. This view also receives support from the decision of the Supreme Court in *Chatturbhuj Vithaldas v. Moreshwar Parasharam* (A.I.R. 1954 S.C. 236) in which the words "shall be disqualified for being chosen" occurring in section 7(d) of the Act were interpreted. According to that interpretation, the choice is made by a series of steps starting with the nomination and ending with the announcement of the election. It is further laid down therein that if a disqualification attaches to a candidate at any one of these stages, he cannot be chosen.

22. A similar question also arose in a later decision of the Supreme Court in *Satya Dev Bushahri v. Padam Dev* (10 E.L.R. 103) in which it is stated that the observation in *Chatturbhuj Vithaldas v. Moreshwar Parasharam* (A.I.R. 1954 S.C. 236-9 E.L.R. 301) that the

material period starts with the nomination and ends with the announcement was not a decision on the point, as it proceeded on an agreed statement of counsel on both sides. But even if the observation of the Supreme Court in that case is not regarded as a decision on the point, in view of the words "for being chosen" used in section 7(d) of the Act, it should be regarded as correct interpretation. In *Satya Dev Bushahri v. Padam Dev and others* (10 E.L.R. 103), it was suggested by the counsel that such period extended even upto the notification of the result in the Gazette.

23. These decisions of the Supreme Court were, however, pronounced with reference to the provisions of the Act as they stood before the amendment of the Act by Act No. 27 of 1956. At that time clause (a) of section 100(1) of the Act, as it now stands, was not in existence and the provision regarding "any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act", now contained in clause (d) (iv) of sub-section (1) of section 100 was a part of clause (c) of sub-section (2) of section 100 of the Act, as it stood before the amendment of 1956. In view of this change in the law, brought about by Act No. 27 of 1956, the question arises as to which are the relevant dates for the purpose of deciding whether a returned candidate was not qualified or was disqualified to be chosen to fill the seat under the Constitution or the Act, for the purpose of section 100(1) (a) and for the purpose of section 100(1) (d) (iv) of the present Act. In this connection it is significant that the provision contained in section 100(1) (a) of the present Act is a special provision relating to disqualification of a returned candidate, while the provision contained in section 100(1) (d) (iv) is a general provision relating to any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, which also includes the ground regarding disqualification contained in the former of these two provisions.

24. The question, therefore, arises whether as regards the matter of disqualification sub-clause (a) of section 100(1) of the Act will prevail over the general provision contained in sub-clause (d) of section 100(1) of the Act or whether these provisions refer to two different points of time and there is no conflict between them. On a similar point in connection with Article 286(1) (a) and Article 286(2) of the Constitution, it is stated by the Supreme Court in *State of Bombay v. United Motors Ltd.* (A.I.R. 1953 Supreme Court 252) that it is a well-known rule of interpretation of statutes that a particular enactment is not repealed by a general enactment in the same statute. It is also laid down therein that where a special and a general provision are inserted which cover the same subject-matter, a case falling within the words of the special provision must be governed thereby and not by the terms of the general provision. There are also other decisions in which this rule has been stated. Those decisions are *Bhana Mukun v. Emperor* (A.I.R. 1936 Bombay 256), *Shridhar Mahadeo v. Godulal Jethmal* (A.I.R. 1940 Bombay 20), *K. U. Kulkarni v. Ganpat Teli* (A.I.R. 1942 Bombay 191) and *Subodhchandra Popatlal v. The Commissioner of Income-tax, Bombay* (I.L.R. 1951 Bombay 397—A.I.R. 1954 Bombay 234). In the last of these cases, it is laid down that according to well-established canons of construction, when a statute deals with a special case, it is not permissible to contend that the special case would also fall under the general provision of the statute.

25. Applying these principles of the construction of statutes to the provisions of section 100 of the Act, it is clear that a question of want of qualification or disqualification of a returned candidate on the date of his election will be governed by clause (a) of section 100(1) of the Act. But the question of want of qualification or disqualification of a returned candidate before the date of his election, apart from the question of improper acceptance of his nomination, will be governed by clause (iv) (d) of section 100(1) of the Act. In this way, both these provisions are reconciled and there does not remain any conflict between them.

26. In this respect it is also necessary to note that so far as the grounds contained in clauses (a), (b) and (c) of sub-section (1) of section 100 of the Act are concerned, question whether the result of the election concerning a returned candidate has been materially affected does not arise. If any of these grounds is proved, subject to the provisions of sub-section (2) *ibid*, the Tribunal is bound to declare the election of the returned candidate void, even though the result of the election has not been materially affected. If, however, any of the four grounds contained in clause (d) of sub-section (1) of section 100 is proved, in order to enable the Tribunal to declare the election of the returned candidate void, the further proof that the result of the election concerning a returned candidate has been materially affected, will be necessary.

27. In the light of the pertinent provisions of the Act explained above, the pleadings and the evidence in the case as regards the point of alleged disqualification will now be considered. According to the allegations in para (3) (i) of the election petition, the petitioner's case is as follows:

"That the respondent is a partner of the Managing Agents the C.P. Development Co. of the Ballarshah Timber Syndicate Ltd., Ballarshah, District Chanda. The said Ballarshah Timber Syndicate has entered into an agreement with the Rail-

way Administration for the supply of wooden sleepers for laying down rail roads. The said Syndicate has also entered into a lease agreement with the ex-Zemindar of Ahiri Estate. After the abolition of Proprietary Rights, the said agreement is being continued by the State of Madhya Pradesh and after the States Reorganisation Act, 1956, the State of Bombay as successor to the ex-proprietor. Thus the respondent being the partner in the Managing Agency the C.P. Development Co. of the above said Syndicate was disqualified to be a candidate as he was interested in that capacity in contracts with the Government. The respondent also gets a remuneration of about Rs. 1,200 per month as Managing Agent of the said Syndicate. The respondent manages the affairs of the above-mentioned Syndicate as Managing Agent and is interested in the contracts in that capacity."

28. In reply to these allegations in the election petition the respondent admits, as has been already indicated, that he is a partner of the C.P. Development Company and a Director of the Ballarshah Timber Syndicate. He, however, denies that he got or gets Rs. 1,200 per month or any other remuneration. But he admits that the Managing Agency agreement provides payment of Rs. 1,200 per month to the C.P. Development Company, but the partners have been continually foregoing all remuneration since about four years, as the Company has not been running in profit and thus he has not been getting any remuneration from the Company for the last four years. To the same effect is his evidence in para 25 of his deposition in which he has also stated that he is a Managing Director of the Ballarshah Timber Syndicate. So far as this case of the respondent is concerned, he receives support from the evidence of Mukund Vinayak Jaiwant (AW-45), the Secretary of the Ballarshah Timber Syndicate Ltd., when the latter stated in paragraph 15 of his deposition that from 1954 no remuneration has been paid to the Managing Agents of the Ballarshah Timber Syndicate, because the said Company was continuously suffering losses. No evidence to the contrary has been adduced by the petitioner. It must, therefore, be held that the respondent has not been getting any remuneration as Managing Agent of the Ballarshah Timber Syndicate Ltd. This is, however, a matter of little consequence.

29. The most material question in this case is whether any contracts made by the Ballarshah Timber Syndicate with the Southern Railway existed on the date of nomination, on the date of election, and also on any date between the date of nomination and the date of election. In this connection it is necessary to remember that it is undisputed that the date of nomination was 29th January 1957 and the date of election, that is to say, the date when the result of the election was declared was 23rd March 1957. The respondent, however, denies in his written statement that the said Ballarshah Timber Syndicate holds any contract for supply of sleepers to the Railway. But he also admits in his written statement that some contracts were made in 1953 and 1954 with the Southern Railway and they were all fully discharged by June 1956 and hence no contract existed or continued on the material date. In this connection in his statement of particulars dated 10th September 1957 the petitioner stated that the respondent has himself stated in his reply to the petition that the Ballarshah Timber Syndicate had some contracts for supply of sleepers to the Southern Railway between 1953 and 1954 which were discharged by June 1956 and under these circumstances no more particulars were required in the matter. Thereafter, on the application (I.A. No. 7) of the respondent the petitioner was directed by my order dated 18th September 1957 that as regards paragraph (3) (i) of the election petition, the petitioner should give the date of the agreement and the name of the Railway Administration in question and he should also state the fact whether the said agreement existed on the date of the election. But he failed to furnish those and other particulars and, therefore, I decided by my order dated 26th September 1957 that no issue should be framed in respect of the items for which particulars have not been furnished by the petitioner though ordered. As a consequence of this order the draft issue no. 2 (b) was cancelled.

30. However, in view of the respondent's admission referred to above, the issue no. 2 (b), as it now stands, was framed. In this connection, it is contended by the learned counsel of the respondent that the petitioner has no provable pleading on the point and the petitioner was not entitled to lead evidence on matters not pleaded by him. It is true that so far as the admission of the respondent in question is concerned, it should be relied upon as a whole or not at all. This view receives support from the Privy Council decision in *Motabhoj Mulla Essabhoj v. Mulji Haridas* (I.L.R. 39 Bombay 399 at page 409) in which it is laid down that it is permissible for a Tribunal to accept part and reject the rest of any witness's testimony; but an admission in pleading cannot be so dissected and if it is made subject to a condition, it must either be accepted subject to the condition or not accepted at all. That decision was followed in *Birendra Nath Malik v. Brahma Brata Ray* (I.L.R. 1946-I Calcutta 652), *Sundara Bajali v. Gopala Thevan* (A.I.R. 1934 Madras 100), *Udaypal Singh v. Lakshmi Chand* (I.L.R. 58 Allahabad 261) and *Mt. Krishnabai v. Dhondo* (20 N.I.R. 63).

31. But the question regarding the non-existence or non-continuance of the contracts on the material dates between the Ballarshah Timber Syndicate and the Southern Railway was raised by the respondent in his pleading, although the question regarding existence or continuance of such contracts on the material dates was not specifically raised in the pleading of the petitioner which was vague and wanting in necessary particulars. As, however, the allegations in this respect exist in the written statement of the respondent which constitutes a part of the pleadings it is, in my opinion, permissible to frame an issue about those allegations in view of Rule 3 of Order 14 of the Code of Civil Procedure. It is, therefore, open for the petitioner to prove that the contracts in question existed or continued on the material dates. Consequently, the two decisions cited by the learned counsel of the respondent to show that the petitioner cannot be allowed to prove the existence or continuance of the contracts in question on the material dates *viz.*, *Kanda v. Waghu* (A.I.R. 1950 P.C. 68) and *Eshenchunder Singh v. Shamachurn Bhutto* (11 M.L.A. 7) are in my opinion, not applicable to the facts of the present case. But the issue in this connection should have been framed in the negative form so as to indicate the burden of proof on the petitioner. In any case, in my opinion, the burden of proof of the issue No. 2(b) rests on the petitioner.

32. The question, therefore, arises whether the petitioner has been able to prove that the contracts in question which were referred to in the respondent's written statement existed or continued between the Ballarshah Timber Syndicate and the Southern Railway on the relevant dates. The petitioner has in this respect examined Shri Vishweshwarrao (AW-43), Mukund Jaiwant (AW-45) and Shri Putta Swami (AW-46, examined on commission). So far as the evidence of Shri Vishweshwarrao (AW-43) is concerned, he is also one of the partners of the C.P. Development Company, which is a partnership firm, the other partners being his brother Bhagwantrao and the respondent. As a partner of that Company, as stated by him, he was one of the Managing Directors of the Ballarshah Timber Syndicate; but before the election he resigned his Directorship of the Ballarshah Timber Syndicate in or about December, 1956. He has further stated in his evidence that at the time he tendered resignation as Director of the Ballarshah Timber Syndicate there were no running contracts for the supply of sleepers by the Ballarshah Timber Syndicate to the Southern Railway but some amount due on the contracts that had already expired were received in February of March, 1957, by the Ballarshah Timber Syndicate from the Southern Railway.

33. In this respect Shri Vishweshwarrao has stated in his cross-examination (para 13) that supply of sleepers in respect of the contracts with the Southern Railway was completed in the year 1956 as he learnt in the office of the Ballarshah Timber Syndicate and the money, that is to say, the price of the sleepers supplied was received from the Southern Railway in March, 1957. But he admits that he did not personally see the records in this connection in the office of the Ballarshah Timber Syndicate or anywhere and he is not also aware of the terms of the contracts regarding payment of the price of the goods supplied by the Ballarshah Timber Syndicate to the Southern Railway. He is not even aware, as further stated by him in his cross-examination (para 14), whether the General Manager of the Southern Railway had held that the contracts had been fully completed and had ordered the refund of security deposit, presumably before 29th January, 1957, the date of nomination. Thus, it is clear from his evidence that he has no personal knowledge of the conditions or fulfilment of the contracts in question for the supply of sleepers by the Ballarshah Timber Syndicate to the Southern Railway and his evidence is unhelpful in this respect.

34. The real picture of the position regarding the contracts in question is found in the evidence of Mukund Jaiwant (AW-45), who has been the Secretary of the Ballarshah Timber Syndicate for the last eight years and who has produced the relevant records of the office of the Ballarshah Timber Syndicate. As he has stated in his evidence (para 3) the first contract of the Ballarshah Timber Syndicate with the Southern Railway is dated 2nd March, 1954, for 6,000 track sleepers B.G. to be supplied by the end of March, 1954, and Ex. R-26 is a letter of the Southern Railway accepting the tender of the Ballarshah Timber Syndicate for 6,000 B.G. sleepers and asking for security deposit of Rs. 51,00. This security deposit was, according to him, subsequently made. There were then, as further stated by him, two contracts dated 3rd July, 1954. One of them was for 1,500 B.G. sleepers and 5,000 M.G. sleepers to be supplied by the end of March, 1955, and for this contract security deposit of Rs. 3,338 was made according to letter dated 5/7th June, 1954, Ex. R-27. The third contract, as he says, was for special size 7,780 sleepers to be supplied by the end of March, 1955, and the security deposit for this contract was Rs. 6,956 according to letter Ex. R-28. He has also stated that thereafter from 1955, no fresh contracts could be entered by the Ballarshah Timber Syndicate with the Southern Railway and the Ballarshah Timber Syndicate had not the material which the South Eastern Railway required.

35. As regards the position for supply of sleepers by the Ballarshah Timber Syndicate to the Southern Railway, he further stated in his evidence (para 8) that 6,000 B.G. sleepers of the first contract and special size sleepers of the contract dated 3rd July, 1954, were fully supplied by 10th June, 1956. Similarly, according to him, all the 5,000 M.G. sleepers of the contract dated 3rd July, 1954, were fully supplied by 10th June, 1956; but 1,500 B.G. sleepers relating to the same contract were not supplied at all, as the Ballarshah Timber Syndicate found the contract of supply of the said sleepers unprofitable and they preferred to get the contract terminated. He, therefore, by letter dated 26th June, 1956, of which Ex. R-32 (a) is an office copy, wrote to the General Manager, Southern Railway, for terminating that contract and the Southern Railway by letter dated 1st September, 1956, Ex. R-33, treated that contract as having been terminated under clause 6 of the conditions of the contract and Rs. 2,550 were forfeited out of the security deposit of the Ballarshah Timber Syndicate and refund of Rs. 788 was ordered.

36. As he further stated, under clause 2 of the agreement bond, Ex. R-34, that decision of the General Manager regarding the refund of Rs. 788 was binding on the Ballarshah Timber Syndicate. Thereafter, by the letter dated 16/22nd November, 1956, Ex. R-35, by the General Manager to the Financial Adviser and C.A.O., the General Manager ordered the refund of Rs. 788 and sent the refund voucher to the F.A. and C. A. O. and copy of the same Ex. R-36, was sent to the office of the Ballarshah Timber Syndicate. Subsequently, on 25th January, 1957, as he says, he had reported to the Board of Directors by letter of that date, Ex. R-37, to make one more attempt to secure the full amount of the security deposit. But when on 26th January, 1957 the matter came up before the Board of Directors, they by resolution No. 2, Ex. R-38, resolved to accept the forfeiture of Rs. 2,550 made by the General Manager under the terms of the agreement.

37. As regards the payment of price, Mukund Jaiwant (AW-45) stated in his evidence (paras 13 and 14) that under the agreement first 90 per cent. of the price is paid on production of railway receipt and thereafter 10 per cent. of the price is paid after the acceptance of the goods. The last date of payment of price, according to him, by the Southern Railway to the Ballarshah Timber Syndicate is 5th January, 1957 and by that time the full price of the material supplied to the Southern Railway was received.

38. Regarding the refund of security deposit, he stated in his re-examination by the petitioner (para 17) that cheque No. 18753, dated 15th January, 1957, for Rs. 5,100 was received on 2nd February, 1957, and it was deposited in the State Bank of Chanda on 4th February, 1957, and after deducting the Bank commission, the amount of Rs. 5,093-10-0 was credited to the account of the Ballarshah Timber Syndicate by the Bank under date 15th February, 1957. He also stated in para 18 of his deposition that cheque of Rs. 788 No. 18753/11 of 23rd January, 1957, was received on 22nd February, 1957 and it was deposited in the account of the Ballarshah Timber Syndicate in the State Bank of Chanda on 1st March, 1957, and the Bank deducted the commission of Rs. 1-12-0, which was debited to the Company's account, and the amount of Rs. 788 was credited to the Company's account on 1st March 1957. He also stated in para 19 of his evidence that cheque for Rs. 6,956, No. 18753/12 of 18th February, 1957, was received by him on 7th March, 1957, and was deposited in the State Bank of Chanda on 8th March, 1957, and amount of Rs. 6,947-4-0 was credited into the Company's account on 22nd March, 1957, after deducting their commission.

39. This evidence of Mukund Jaiwant (AW-45) receives support from the evidence of Shri S. Puttaswami (AW-46), Executive Engineer, Sleeper Control, Southern Railway, Madras, who was examined on commission. As regards his evidence, the respondent had raised an objection before the Commissioner that the Tribunal had directed the examination of the General Manager only and in his absence none else could be examined. But the Commissioner allowed the petitioner to examine Shri S. Puttaswami, because the Deputy General Manager Shri D. B. Patel had deputed Shri S. Puttaswami who, being Executive Engineer Sleeper Control, was the officer-in-charge of the subject regarding which evidence was being taken. In these circumstances, it was the choice of the petitioner either to examine or not to examine Shri Puttaswami. When, therefore, the petitioner preferred to examine Shri Puttaswami, the respondent could not object to his examination and the respondent's objection is consequently without any substance.

40. The evidence of Mukund Jaiwant (AW-45) and Shri S. Puttaswami (AW-46) is evidently disinterested and there is nothing in it to indicate that any part of their evidence is suspicious or untrue. Their evidence is in these circumstances, reliable. For the sake of convenience the summary of their evidence regarding the history of supply of sleepers by the Ballarshah Timber Syndicate to the Southern Railway and the payment of price and of security deposit by the Southern Railway is given in the following tabular form in which the date of nomination and the date of election are also given for the sake of easy reference:

*Contracts of Ballarshah Timber Syndicate Ltd. with the Southern Railway.*

Date of Nomination . . . . . 29-1-1957

Date of Election under section 67-A of the Act 23-3-1957

Sl. No.	Date of contract	Material to be supplied	Material actually supplied	Last date of supply	Whether fully made or contract terminated.	Last date of payment of price 10%	Amount of security deposit
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1	2	3	4	5	6	7	8
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1	2-3-54	6,000 B.G.	6,000 B.G.	10-6-56	Full	5-1-57	Rs. 5,100
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2	3-7-54	1,500 B.G. 5,000 M.G.	5,000 M.G.	10-6-56	Terminated Rs. 1,500 B.G. 1-9-56 Ex. R-33	5-1-57	3,338
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3	3-7-54	7,780 spls.	7,780 spls.	10-6-56	Full	5-1-57	Rs. 6,956
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Amount ordered to be re-funded	Date of G.M's. Refund Voucher	Exhibit No.	Date of cheque	Date on which amount was credited in Co.'s acct. with State Bank.	REMARKS
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9	10	11	12	13	14
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Rs.  
5,100 15/16-11-56 Ex. R. 40 15-1-57 15-2-57

Rs.  
788 16-11-56 Ex.R. 35 23-1-57 1-3-57 (a) On 1-9-56 by letter Ex. R.-33 the Southern Railway forfeited Rs. 2550/- & allowed the refund of Rs. 788/-.  
(b) Forfeiture was accepted by resolution dt. 26-1-57 of the Board of Directors.

Rs.  
6,956 10/12-12-56 .. 18-2-57 22-3-57

41 In view of this position of the supply of sleepers by the Ballarshah Timber Syndicate to the Southern Railway and payment of price and the refund of security deposit relating thereto, it is now necessary to consider whether on the relevant dates, namely, 29-1-1957 and 23-3-1957 or any date between 29-1-1957 and 23-3-1957 the respondent as a Managing Director and Managing Agent of the Ballarshah Timber Syndicate had any share or interest in any contract for the supply of sleepers to the Central Government. In this connection, it is useful to refer to the decision of the Supreme Court in *Chatturbhuj Vithaldas V. Moreshwar Parashram* (A.I.R. 1954 S.C. 236) in which it is laid down that when a contract consists of a number of terms and conditions, each condition does not form a separate contract but is an item in the one contract of which it is a part and the consideration for each condition is the consideration for the contract taken as a whole and it is not split up into several considerations apportioned between each term separately.

42. It is further laid down therein that a contract for the supply of goods does not terminate when the goods are supplied; it continues in being till it is fully discharged by performance on both sides; and it cannot be said that the moment the contract is fully executed on one side and all that remains is to receive payment from the other, then the contract terminates and a new relationship of debtor and creditor takes its place. It is further observed in that case that there is always a possibility of the liability being disputed before actual payment is made and the vendor may have to bring an action to establish his claim to payment and in such a case the existence of the debt depends on the contract and cannot be established without showing that payment was a term of the contract. It is also laid down in that case that it is true that the contractor might abandon the contract and sue on *quantum meruit* but if the other side contested and relied on the terms of the contract, the decision would have to rest on that basis.

43 The facts found proved regarding the contract in question will now be examined in the light of the principles laid down by the Supreme Court in *Chatturbhuj Vithaldas v. Moreshwar Parashram* (A.I.R. 1954 S.C. 236). It is clear from the tabular statement given in paragraph 40 above that the last date of supply of the goods in question by the Ballarshah Timber Syndicate to the Southern Railway was 10th June, 1956. It is also clear that in the case of contracts against serial nos. 1 and 3 in the tabular statement, full supply was made by 10th June, 1956. It is further obvious that in respect of contract against serial no. 2 also, last date of supply of a part of the contracted goods was 10th June, 1956. Regarding the supply of the rest of the goods of that contract, however, that contract was terminated on 1st September, 1956 by the Southern Railway and even the forfeiture of the security deposit relating to that contract to the extent of Rs. 2,550 was accepted by the Ballarshah Timber Syndicate by 26th January, 1957. Thus, the supply of the contracted goods was complete before 29th January 1957, the date of nomination. It is further evident from the tabular statement that even the payment of the price by the Southern Railway to the Ballarshah Timber Syndicate, as shown in column 7 of the tabular statement, was complete by 5th January 1957, that is to say, before the date of nomination.

44. Therefore, after 5th January 1957, what remained to be paid was security deposit, that is to say, the amount deposited by the Ballarshah Timber Syndicate with the Southern Railway by way of security for performance of the contract in question. In the case of two security deposits of the contracts mentioned against serial nos. 1 and 3 in the tabular statement, the Southern Railway was liable to return the full security deposit as full supply of goods was made and price of the whole goods was also paid by 5th January 1957, as already stated. The amount of those two deposits, therefore, ceased to have any connection with the performance of the contracts in question and those amounts thereafter remained with the Southern Railway only for the purpose of payment to the Ballarshah Timber Syndicate and for no other purpose. The General Manager ordered the refund of those amounts by 12th December 1956, that is to say, before the date of nomination. It is also significant in this connection that according to Shri S. Puttaswami (AW-46) when once the refund voucher is passed by the General Manager, the actual payment of the amount is a mere matter routine and in fact the contractor can call up at the Accounts Office and take the amount on identification etc. He has also stated that the security deposit stands for refund immediately after the contract is duly fulfilled. It is, therefore, immaterial that the cheques for those amount were encashed and the amounts thereof were credited in the account of the Ballarshah even those amounts were credited in the accounts of the Ballarshah Timber Syndicate before 23rd March, 1957, that is to say, the date of election.

45. Similarly, it is pertinent that no objection was raised by the Ballarshah Timber Syndicate when the Southern Railway informed the Ballarshah Timber Syndicate by letter dated 1st September 1956, Ex.R-33, that the part of the contract for supply of 1500 B.G. sleepers was terminated and in lieu of compensation for non-performance of that part of the contract by the Ballarshah Timber Syndicate security deposit was forfeited to the extent of Rs. 2550. Thus, from 1st September, 1956, the remaining amount of Rs. 788, out of the amount of the security deposit of Rs. 3,338, ceased to have any connection with the performance of that contract and it remained in trust with the Southern Railway for payment to the Ballarshah Timber Syndicate. But even the payment of that amount was ordered by

the Southern Railway by 22nd November 1956, that is to say, before the date of the nomination. In these circumstances, it is immaterial that the cheque relating to that amount was encashed and the amount thereof was credited into the accounts of the Ballarshah Timber Syndicate on 1st March 1957. In any case, even that amount was actually received by the Ballarshah Timber Syndicate before 23rd March 1957, the date of the election.

46. When these facts found proved in the instant case are examined in the light of the principles laid down in *Chatturbhuj Vitthal Das v. Moreshwar Parashram* (A.I.R. 1954 S.C. 236) it cannot be said that the respondent, as Managing Director and Agent of the Ballarshah Timber Syndicate had any share or interest on the relevant dates in any contract for supply of goods by the Ballarshah Timber Syndicate to the Central Government within the meaning of section 7(d) of the Act. Thus, the facts of the instant case are different from the facts on which the Supreme Court decided that case. That was a case where the payment of price of goods supplied to the Canteen Stores belonging to the Central Government was not made till after the date of nomination and also till after the date on which the results were declared. Besides, in that case the obligation under the several contracts for replacement of goods during the guarantee period of six months continued even after the date on which the results were declared. In those circumstances it was held in that case that those contracts continued in being till they were fully discharged by performance on both sides and they subsisted on the date of the nomination and also on the date when the results were declared. Thus, the facts of the present case are much different from the facts of that case decided by the Supreme Court.

47. It is also significant that in that case decided by the Supreme Court, the question of refund of security deposit was not involved and, therefore, the question whether the contracts could be said to be subsisting even after the payment of the price of the goods supplied was made, when only payment of security deposit remained to be made, was not decided in that case. Such a question arose in *T. M. A. Naidu v. S. E. Mudaliar* (A.I.R. 1939 Madras 473). It has been held therein that where the work to which the contract relates had been completely performed and completely paid for by the Local Board before the date of nomination, so that really nothing remained to be done by either party to the contract, it cannot be said to have been a subsisting contract at the time, merely because it is possible that an objection to any payment made under the contract might be made by the Audit Department and the amount covered by the objection might have to be recovered from the security deposit made by the contractor. A similar question also arose in *C. Parasuram v. V. C. Chudamani Dev* (13 E.L.R. 66) in which the respondent's security deposit was refunded even after the date of his election. It was held therein that as delay in refunding the deposit was not due to any real pending dispute between the parties concerned, he was not "interested" in the contract on the date of his nomination.

48. Thus, in view of these decisions and the facts of the present case, it cannot be said that the contracts in question were subsisting between the Ballarshah Timber Syndicate and the Southern Railway after 5-1-1957, simply because the security deposit remained to be paid thereafter. In this view of the case I find that as a Managing Director and Agent of the Ballarshah Timber Syndicate the respondent had no share or interest on 29th January, 1957, the date of nomination or on 23rd March 1957, the date of election or any date between these two dates. Therefore, the certificate EX. R-47 dated 18/21st January 1957, granted by the General Manager, Southern Railway that there is no contract pending between the Ballarshah Timber Syndicate and the Southern Railway for the supply of wooden sleepers is correct.

49. The petitioner's learned counsel, however, urged that as admitted by the respondent in his written statement, the Ballarshah Timber Syndicate entered into a contract for purchase and extraction of hard-wood with the Ex-Zamindar of Aheri in 1949 and that contract still subsists and it is being continued by the State of Bombay and, therefore, the respondent as a Managing Director and Agent of the Ballarshah Timber Syndicate holds office of profit under the Government of Bombay. In this connection it is pertinent to note that this question was not raised by the petitioner in his election petition and, therefore, no issue was framed on it. But I will consider this question as a point of law and will examine it from that aspect.

50. In this connection it is admitted by the respondent Shri Swami (RW-18) even in his evidence (para 58) that the twelve-year agreement between the Ballarshah Timber Syndicate and the Aheri Zamindar is still in force by means of a writ issued by the Supreme Court and will be in force upto 1959 or 1960 and under the Abolition of Proprietary Rights Act, the Bombay State has succeeded the proprietors and on that basis the Supreme Court has granted the writ. He has also stated that the said contract was in force with the Madhya Pradesh Government from 31st March 1951 to 31st October 1956 and under the States Reorganisation Act, the Bombay State becomes entitled to the benefits of that contract.

51. In view of these facts, the question arises whether the contractors under such a contract can be said to hold the office of profit under the Government within the meaning of Article 102 of the Constitution of India. In this connection it is first necessary to consider whether such contractors hold office of profit. As has been stated by the Election Tribunal, Bhopal, in *Bejaysingh v. Narbada Charan Lal and others* (2 E.L.R. 426), under Article 102(a) of the Constitution, what is contemplated is employment and nothing short of it. This view receives support from the observations at page 566 of the Commentary by Basu on the Constitution of India, (third edition, volume I), as follows:

"It is hardly necessary to point out that in order to be an 'office of profit' it must first be an 'office' which means an 'employment' with 'fees and emoluments thereunto belonging'. Hence, only holders of employment under the Government are disqualified by the present sub-clause."

This view is also fortified by the observation of the Supreme Court in *Ravanna Subanna v. G. S. Kaggeerappa* (A.I.R. 1954 S.C. 653) that the plain meaning of the expression 'office of profit under the Government' seems to be that an office must be held under Government to which any pay, salary, emoluments or allowance is attached.

52. Thus, an office or employment of profit is an office or employment which has subsisting, permanent, substantive position, which has an existence independent of person who filled it, which goes on and is filled in succession by successive holders. The important test, therefore, is whether there is a relationship of master and servant between the Government and the person concerned. Another important test to determine this question is whether the Government has the power to appoint and remove the person concerned. Applying these tests to the Managing Directors and Agents of the Ballarshah Timber Syndicate in relation to their contract with the Bombay Government, it cannot be said that they hold office of profit under the Bombay Government.

53. The learned counsel of the petitioner, however, relied on *Lala Sohan Lal v. Lala Bindu Saran* (Doabia's Indian Election Cases, Volume I, at page 19), before the First Election Petitions Commission, Lahore, in which the respondent, a member of a firm performing treasury work at certain Post Offices and receiving monthly payment for such work and also working as Chief Cashier and Paymaster on the establishment of the North Western Railway for a sum paid monthly, was held to be holding office of profit under the Government, though the actual work was carried on through the firm's employees and its members were free to do and they actually did other business. But, in that case, in view of the terms of the agreement it was found that the treasurers working under that agreement were subject to the direction and control of Government officer and were bound by the departmental rules and regulations and were required to obey such orders as may be issued from time to time. It was in those circumstances that it was held that the position of those treasurers was very different from those of independent contractors who were not subject to the direction and control of any Government officer and were not bound by any departmental rules and regulations. That decision is not, therefore, applicable to the facts of the present case.

54. In the instant case, the contract in question is an ordinary commercial contract for supply of goods. Such a contractor, as observed in *Md. Baksh v. Md. Abdul Baqi Khan* (A.I.R. 1924 Allahabad 135), who receives remuneration for supply of the articles, cannot in accordance with the ordinary meaning of the word 'place' be said to hold a 'place of profit'. As further observed therein, the proper meaning which should be described to the words "place of profit" is one which denotes position and employment in the sense of having a title attached to such employment and a definite standing and partaking of the nature and character of that of a master and servant. That was a case of a contractor for supply of kerosene oil in bulk to the Municipal Board, Allahabad, and it was held that he did not hold a 'place of profit' in the gift or disposal of the Municipal Board.

55. For these reasons, it is clear that the Managing Directors and Agents of the Ballarshah Timber Syndicate in relation to their contract for supply of goods to the Bombay Government or to the Central Government cannot be said to be holding 'office of profit' within the meaning of Article 102 of the Constitution of India. Therefore, the contention of the learned counsel of the petitioner cannot be accepted in this connection.

56. *Issues nos. 3(a) and (b).*—These issues relate to the allegations contained in para 3(ii) of the election petition which were struck out according to my order dated 18th September 1957, as it was conceded by the petitioner's counsel that the contents in the said para were irrelevant. These issues, are, therefore, wrongly framed and do not arise for decision.

57. *Issues nos. 4(a) to 4(e) and 36(a) to 36(d).*—These issues relate to the allegations contained in paras (3) (iii) and (3) (xi) of the election petition respectively. In this connection, according to the particulars supplied by the petitioner on 25th September 1957, the respondent had engaged Jaiwant, Secretary, Ballarshah Timber Syndicate, Sakharam Chilke,

Ramavatar and his wife, Sureshwar Prasad, etc., to collect ballot papers outside the booths of Ballarpur nos. 2 to 10. It is also stated therein that Sakham Chilke, was respondent's agent to whom Hukum *alias* Kukka Rajam had brought the ballot for sale.

58. So far as Mukund Jaiwant (AW-45) is concerned, he has stated in his evidence that on 25th February 1957, he was not working for Swami and was not purchasing ballot papers for him. He has also stated that on that day at about 4 p.m. there was annual general meeting of the Ballarshah Timber Syndicate and only once for the purpose of voting he moved out of the premises of the Ballarshah Timber Syndicate on that day. There is no reason to disbelieve this evidence. Similarly, Shrimati Sarlabai wife of Ramavatar, the daughter of the respondent, (R-W19, examined on commission), has stated that when polling took place at Ballarshah, she was not at Chanda nor did she visit Ballarshah and it was false that she purchased any votes on the day of polling. On the day, according to her version, she was at Hyderabad where she had gone to attend the marriage of her uncle's son. To the same effect is also, the evidence of the respondent himself (RW-18). Post-card, dated 5th February 1957, Ex. R-89, and telegram, dated 12th March 1957, Ex. R-90, addressed to the respondent by his brother, support their evidence in this respect. There is, therefore, no reason to disbelieve their version and I find it reliable.

59. So far as Sakham Chilke, Ramavatar, pleader and Sureshwarprasad are concerned, they were summoned by the petitioner but they were given up. Similarly, Hukum *alias* Kukka Rajam was summoned and given up by the petitioner.

60. The only witness on which the petitioner relies in this connection is Madhav Khuley (AW-4), who admittedly worked for the petitioner at Chanda and Ballarshah during the last general election. He is related to Jagdishrao Salway (AW-1), who is obviously interested in the petitioner and biased against the respondent. He is a resident of Nagpur but, as stated by him, he went to Chanda on or about 21st January 1957 at the request of Jagdishrao Salway and was in charge of the election office for the petitioner and Kotpalliwar and was receiving salary of Rs. 100 per month from Kotpalliwar. According to him, on 25th February 1957 he noticed 5 or 6 voters returning from the polling station at Neharu Primary School at Ballarshah and going to the nearby hotel instead of going home and he, therefore, suspected that they might be selling ballot papers. He then, as he says, orally informed about this incident to the polling officer of that polling station and the polling officer then said that he would watch what was going on and that polling officer then caught two voters taking with them ballot papers and handed over those two persons to the police. He does not, however, remember the name of that hotel-keeper although, as he says, he had made enquiry about it and had kept a note of it. Two persons, according to him, who were present when he detected those persons in the hotel, are known to him but he does not remember their names. In these circumstances, it is difficult to rely on his suspicion that the persons who went to the hotel from the polling station at Neharu Primary School might be selling ballot papers.

61. Shri Anwikar (AW-10), however, stated in his evidence 2 (para 16) that a complaint was lodged by Khuley at Ballarshah at polling station no. 3 and it was forwarded direct to the Station Officer by the Presiding Officer. But in the report of the Presiding Officer, Ballarpur polling station nos. 3 and 4, of which Ex. A-81 is a certified copy, it is mentioned that Khuley gave a complaint about bringing votes at the poll through *rickshawallas* by the Congress party and his complaint was forwarded to the Station Officer for further action. There was, therefore, no written complaint by Khuley to the Presiding Officer as regards the allegations of collecting and purchasing of ballot papers by the persons said to have been employed by the respondent for that purpose. On the contrary, the document Ex. A-81 shows that one Jaideo Arya, the respondent's polling agent complained to the Presiding Officer that he suspected that one Kukka Rajam was taking away the ballot papers with him. That document further shows that said Kukka Rajam's personal search was then ~~made~~ <sup>made</sup> and one ballot paper was recovered from him and he was arrested and forwarded to the Station Officer, Ballarpur, for further action. That man, as the document Ex. A-88 shows, was subsequently convicted and fined by a Magistrate Second Class, Chanda, under section 135 of the Act.

62. In these circumstances, the respondent cannot be blamed for Kukka Rajam's act of removing a ballot paper out of the polling station. As a matter of fact, as has been observed in the reports of the Presiding Officers of polling station Ballarpur nos. 1, 3 and 4, 194 voters at polling station Ballarpur no. 1, 69 voters in booth no. 3 and 305 voters in booth no. 4 had returned their ballot papers, as they refused to cast their votes for any candidate for the House of the People. Similar reports were made by the Presiding Officers of some other polling stations at Ballarpur (*vide* Exs. A-83 and A-84). Some of the voters appeared to have adopted this attitude in view of the direction issued by Barrister Rajabhai Khobragade (AW-13), the President of the All India Scheduled Caste Federation, in the leaflets of the type of Ex. A-16 and Ex. A-17 to the effect that the voters belonging to the scheduled caste should not allow themselves to be influenced by the canvassing for any candidate for the Parliament, as the Scheduled Caste Federation had not decided as to which

candidate should be supported. As stated by Barrister Rajabhau Khobragade (AW-13), the aim of the Schedule Caste Federation is to defeat the Congress and, therefore, he had no talk with the respondent or his workers in the matter of giving support of the Scheduled Caste Federation to the respondent's election. The respondent, therefore, cannot be held to be responsible for the action of some voters in refusing to vote for any candidate for the House of the People.

63. Besides, the petitioner has not been able to examine a single person who could say that in his presence ballot papers were collected and purchased by the persons working for the respondent. It is, however, true that as shown in the document Ex. A-90, which is a certified copy of final result sheet, 114 votes from the ballot boxes of the respondent were rejected. But that document does not show the grounds of rejection of the ballot papers. The respondent has, however, filed copy of form 21 containing the record of rejected ballot papers from the respondent's ballot boxes, Ex. R-137, which shows that most of those ballot papers were rejected because they were found folded with another ballot paper. But this also happened in the case of ballot papers from the ballot boxes of the petitioner from which also 103 votes as shown in Ex. A-90 were rejected and as shown in Ex. R-136, most of them were rejected as they were found folded with another ballot paper. Thus, in this respect there is not much difference between the position of the petitioner and that of the respondent.

64. In view of all these circumstances, the petitioner's version which Madhav Khuley (AW-4) sought to support regarding collection and purchase of votes by the workers of the respondent appears to be preposterous and cannot be believed. This inference receives support also from the fact that Ganpat (AW-6) who, as stated by him, was present at Ballarshah on 25th February 1957 does not say anything in this matter.

65. Coming now to the question of folded ballot papers, according to Jagadish Salway (AW-1) in some of the ballot boxes 2 to 5 ballot papers used to be found together in folds. Similarly, Manohar Kotpalliwar (AW-41) has stated that he noticed that from the boxes of the respondent several ballot papers folded together were found and it was brought to the notice of Shri Anwikar and to the same effect is the evidence of Tekam (AW-42) and Vishweshwarrao (AW-43). In this respect Shri Anwikar (AW-10) has stated that at the time of the counting of ballot papers in Congress boxes, several ballot papers folded together were found and 83 of them as had common angle of fold and which appeared to be folded together were rejected. But he has also stated that on the ground of folds, 49 ballot papers of the petitioner were also rejected. No distinction can, therefore, be made in this respect between the petitioner and the respondent.

66. Moreover, as stated by R. P. Tekam (AW-42), there was no written complaint made about the ballot papers found in folds, even after the Returning Officer began to ignore objections regarding the folded ballot papers. In any case, ballot papers found in folds, as explained by Shri Anwikar (AW-10), were rejected by the Returning Officer, presumably under sub-rule (2) (b) of Rule 57 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956, on the ground that they were spurious. According to the dictionary meaning, the word 'spurious' means 'not genuine' or 'false'. The ballot papers found in folds could not be said to be false or not genuine, simply because they were found in folds. But even assuming that they were spurious, the material on record, which has been already discussed, does not indicate that the respondent was responsible directly or indirectly for putting in such ballot papers in his ballot boxes. Thus, the petitioner has not been able to show in this respect that the respondent has contravened any provisions of the Act or Rules. In any case, as indicated above, ballot papers found in folds were rejected by the Returning Officer, presumably because it was thought that they were inserted illegally into the ballot boxes. Consequently, by mere existence of such ballot papers in the ballot boxes of the respondent, any corrupt practice or any illegality is not proved against the respondent, his worker or any other known person and in any case it has no material effect on the respondent's election.

67. *Issues nos. 5(a) and (b).*—These issues relate to the allegations contained in para. (3) (iv) of the election petition. The petitioner's version, as stated therein, is that on 24th February 1957, the respondent promised to give Rs. 300 as donation for construction of a school building at Manora with a view to induce the voters in that locality to vote in his favour. In this respect, the petitioner was directed on 18th September 1957 to give the name of the person or persons to whom the respondent promised to give Rs. 300 as donation. Thereafter, on 25th September 1957, in his statement of particulars, the petitioner stated in this respect that the respondent had promised to donate Rs. 300 in the public meeting held by him at Manora on 24th February 1957 at about 4 p.m. and the promise was given to the Chairman, School Committee and Udhav Fakira Gedam, Dashrath Pochu Kowey, Ratansing Lalji, Zunke, etc., were present at that meeting.

68. Of these persons who were said to have been present at the said public meeting of Manora, the petitioner examined only Dasharath (AW-3). So far as Dasharath's evidence is concerned, it is pertinent to note that while according to the particulars given by the

petitioner, the promise of donation of Rs. 300 was given by the respondent to the Chairman of the School Committee, he has stated in his evidence that the Gram Panchayat members made a demand in the Patil's *wada* that a candidate of a party which would donate Rs. 300 for the construction of the school building would be supported by the village people and thereupon the respondent promised to pay them the sum they had demanded. It is rather difficult to believe that the respondent would make such a promise so openly.

69. Moreover, according to Dashrath (AW-3) on 24th February 1957 in the evening Bhagwantrao and Tekam had come to Manora when Shri Swami visited it. But admittedly he had not informed them at Manora about the incident of the alleged promise of Rs. 300 given by the respondent to the members of the Gram Panchayat. If the alleged incident were true, he would have certainly told Bhagwantrao and Tekam about it and the fact that he did not do so goes a long way to show that the alleged incident is in all probability untrue. His explanation in this respect that about 2 or 4 days after the polling at Manora, he informed about the incident to Bhagwantrao and Tekam at Chanda at their houses, is evidently worthless and appears to be got-up and cannot be believed.

70. Besides, as admitted by him, he did not inform the polling officer regarding the offer of Rs. 300 by Shri Swami on 24th February 1957 to the members of the Gram Panchayat. None of the persons who was said to have made a demand to the respondent was examined by the petitioner and Dasharath (AW-3) does not know, as admitted by him, the names of the persons who were present at that time. In these circumstances, the evidence of Dasharath (AW-3) appears to have been invented simply for the purpose of supporting the election petition. This witness at one stage admitted during the cross-examination that he canvassed for the petitioner at Manora. He thus appears to be a got-up and interested witness and his evidence on a serious charge like bribery in question does not at all carry conviction.

71. This evidence, therefore, adduced by the petitioner is not required to be rebutted. However, in his evidence, the respondent Shri Swami (RW-18) has denied that he promised at Manora on 24th February 1957 any donation to any person or to school or that anybody demanded any donation to him. But he admitted that on 24th February 1957 he had been to Manora. However, only from that fact an inference cannot be drawn against him on the question of the alleged promise. His evidence also receives support from his witnesses Nikanthrao Diwanji (RW-4), Anandrao Gawande (RW-9) and Raghunath (RW-16), who is the Sarpanch of the Manora Gram Panchayat and also the President of the School Committee, Manora. In the face of the evidence of these persons and especially of Raghunath (RW-16), the evidence of Dasharath (AW-3) cannot be accepted at all. Thus, the petitioner has failed to prove his case or even to raise any suspicion against the respondent regarding the alleged promise of donation for construction of the school building at Manora.

72. *Issue No. 6.*—This issue relates to the allegations contained in para (3)(v) of the election petition in which it is stated that one Anandrao Gawande who was canvasser for the respondent distributed liquor to the voters in the afternoon of 25th February 1957, the day of polling. In this connection, the petitioner was directed to give the place and the time where Anandrao Gawande distributed liquor to the voters. Thereafter the petitioner stated in his statement of particulars dated 25th September 1957 that Anandrao Gawande distributed liquor to the voters at Manora on 25th February 1957 between 12 noon to 2 p.m. In support of these allegations the petitioner has examined Dasharath (AW-3) alone. According to Dasharath's version in this respect, on the morning of 25th February 1957 some village people were found drunk and they were shouting that the people should put their votes in the box carrying symbol of bullocks with yoke on and they were also shouting as "*Tirkamatha Murda Bad*". As he further states, he personally saw Anandrao Gawande and Gawal Panchi supplying liquor to those persons who were Baru Paika Dhobi and Kawadu Kanhu Saoteli.

73. This witness, however, stated in his cross-examination that although he had informed about the incident to the petitioner's polling agents Marotrao Baddalwar and Buran Atram, he did not make any written report to the polling officer about it. But he says that he had made a report about the incident to the head-constable and that head-constable had taken those people to task. That head-constable has not been examined by the petitioner. He, however, further stated that what he had reported to the polling officer was not that Congress workers gave some liquor to people but it was that some persons were in a drunken condition and were shouting for the box of bullocks and this incident happened at about 7.30 a.m. on 25th February 1957. Thus, this statement negatives his own version and the petitioner's case that the two workers of the respondent had given liquor to some persons in the afternoon of 25th February 1957. In these circumstances, the evidence of this witness, who is evidently interested in the petitioner, is not worthy of belief and cannot be accepted, especially because it does not receive corroboration from any disinterested and independent person.

74. Moreover, as stated by Shri Anwikar (AW-10) there were no complaints at Manora polling station against Congress candidates. The three documents, Ex. R-115, a copy of the report of the Presiding Officer, Manora, to the Returning Officer, Ex. R-116, a copy of com-

plaint of Gadu Kolate, and Ex. R-117, a copy of the report of one Balaji Ramaji Madavi, show that no complaint was made to the polling officer, Manora, regarding the incident in question. The evidence of Dasharath (AW-3) adduced by the petitioner does not, therefore, require any rebuttal.

75. But assuming that that it is required to be rebutted, the respondent has adduced sufficient and satisfactory evidence of rebuttal in this respect. There is the evidence of Anandrao (AW-9), who has stated that he or Gawal Panchi did not give liquor to any person at Manora and none was found in a drunken condition. Similarly, Ragunath (RW-16), the Sarpanch of the Manora Gram Panchayat, has stated that no liquor was supplied at Manora to any man on the night previous to the polling day or on the polling day. Ragunath is a disinterested and independent witness, because it appears that he did not work for any candidate during the last general election. His evidence is, therefore, worthy of reliance and must be accepted. Thus, the petitioner has failed to prove that Anandrao Gawande, canvasser for the respondent, distributed liquor to the voters on 25th February 1957 at Manora.

76. *Issues Nos. 7 (a) and (b).*—These issues relate to para (3) (vi) of the election petition. Petitioner's version in this connection is that at Gondipri one Tulsiram s/o Bhadu Meshram Gond, said to be one of the active workers of the petitioner, was beaten by Congress workers on 25th February 1957. In this connection it is pertinent to note that though said Tulsiram was cited as a witness by the petitioner, he was not examined. Instead, the petitioner examined Bhagwanshah (AW-21), who admittedly worked for the petitioner in the last general election campaign. His version is that while he was at Gond Pipri on 25th February 1957 and was working as polling agent for the petitioner, one Kisan complained to him on that day at the polling station that one Saokar, whose name he did not remember, had beaten Tulsiram Bhadu, one of the petitioner's workers, out of the polling station. One Krishnarao (AW-7), a pan shop-keeper of Gondipri, does not support the version of Bhagwanshah (AW-21). There is also no mention of the complaint regarding any such incident in the reports of the Presiding Officers of polling stations Nos. 32 and 33 of Gondipri (*vide* Exs. R-112 and R-113). The version of Bhagwanshah (AW-21), therefore, that he orally complained about the complaint in question to the Presiding Officer is evidently unreliable.

77. In any case, his evidence is hearsay and it is inadmissible. He has stated in his cross-examination (para 7) that he did not himself see that beating and did not make a report to the police regarding that occurrence, although there were 6 or 7 police officers present at Gondipri on that day. In these circumstances, his uncorroborated and interested version is unworthy of belief and I find that the petitioner has failed to prove that Tulsiram was his polling agent and that he was beaten Congress workers on 25th February 1957.

78. *Issue No. 8.*—This issue relates to the allegations in para (3) (vii) of the election petition in which it is alleged that two rickshas Nos. 54 and 59 belonging to Chimurkar of Chanda and respondent's car were used for carrying voters to the polling station on 25th February 1957 at Ballarpur. The only evidence adduced by the petitioner in this respect is of Madhav Khuley (AW-4), whose evidence has been already discussed on another point. He is evidently highly interested witness. According to his version, on 25th February 1957 at Ballarshah while he was returning from the side of the Paper Mills towards the city, he found two rickshas carrying four women, two men and one boy to the polling station near the railway bridge inside the city. As he says, he asked the ricksha plyers as to where those persons were being taken and they told him that they were being taken to the polling booths and he then warned them that it was against law but they said that they were doing it at the instance of their master Chimurkar. As he further stated, another ricksha pleyer also told him that the respondent had directed Chimurkar to do so. To this part of the evidence regarding respondent's direction to Chimurkar, the respondent's learned counsel raised an objection that it was inadmissible. This objection is sound, because that ricksha pleyer has not been examined by the petitioner.

79. Madhav Khuley further stated that he warned those ricksha plyers to leave those persons and not to take them to the polling station in rickshas but they refused to do so and then he went to the nearby police station and made a report there. But no such police report has been called and placed by the petitioner on record. It is also significant that although, as stated by this witness he had noted the names of those ricksha plyers, he did not remember their names at the time of giving evidence. He had even noted, as stated by him, on a piece of paper the names of persons who were being carried in those rickshas and he had given that paper to the petitioner's election office, but he does not remember their names. He does not even remember the name of one person who was accompanying him at that time although he had kept a note of that person. These circumstances create great suspicion regarding the veracity of his version.

80. It is, however, true that in the report of the Presiding Officer, Ballarpur, polling stations Nos. 3 and 4, of which Ex. A-81 is a certified copy, it is mentioned that one Khuley gave one complaint about bringing voters at the poll through *rickshawalas* by the Congress party and his complaint was forwarded to the Station Officer for further action. But simply

because he had made such a report his version cannot be believed. No other witness is examined by the petitioner to corroborate the evidence of Madhav Khuley and it is found in the cross-examination of Manohar Kotpalliwar (para 16) (AW-41) that he had obtained cycles of Chimurkar on hire for propaganda work. It is, therefore, possible that in two of those rickshas some of his workers or voters were being taken on the polling day, but Madhav Khuley made a report against the Congress party in order to shield his master Manohar Kotpalliwar. Moreover, Kishanrao Madhorao and Dada Shadangle of Ballarshah, though summoned by the petitioner, were not examined by him. In these circumstances, it is extremely risky to rely on the uncorroborated and interested evidence of man like Madhav Khuley (AW-4).

81. The respondent has also adduced on this point some negative evidence in rebuttal. Shri S. H. Bhalerao (RW-3), Pleader of Chanda, has stated that on 25th February 1957 which was polling day at Ballarshah, he was there from at about 8 or 9 am. to about 9 p.m. and he was supervising the polling on behalf of the Praja Socialist Party. But, as he says, he did not see on that day any ricksha or any voters being taken in rickshas at the polling station and he did not receive any such complaints. In view of his evidence which appears to be reliable and in view of the circumstances already examined, the evidence of Madhav Khuley (AW-4) cannot be accepted.

82. Moreover, on behalf of the petitioner, no witness was examined to support the allegation that respondent's car was used for carrying voters to the polling station on 25th February 1957 at Ballarpur. The respondent (RW-18) himself has stated in para 3 of his evidence that on the day of polling at Ballarshah, his car was not there at all and it was not used for conveying any voters to the polling stations. He has also stated that he did not engage any ricksha for conveying any voters at Ballarshah. His evidence in this connection remains uncontroverted and there is no reason why he should not be believed, especially when the evidence of Madhav Khuley (AW-4) has been found to be highly interested, suspicious and unworthy of any credit. I therefore, find that the petitioner has failed to prove that two rickshas Nos. 54 and 59 belonging to Chimurkar of Chanda and respondent's car were used for carrying voters to any polling station on 25th February at Ballarpur which is also called Ballarshah.

83. *Issues Nos. 9(a), (b) and (c).*—These issues relate to the allegations made in para (3) (ix) of the election petition. The petitioner's case in this respect is that on 21st February 1957 at Sangola, the three police officers of Siraj police station abused Paikan Chintu Kunbi and Maroti Warpatkar in filthy words and beat them and tied their hands and took them to Siraj police station where they were released on condition that they would not canvass and work against congress candidates. In this connection it is pertinent that said Paikan and Maroti though summoned at the instance of the petitioner were not examined. The petitioner has, however, examined one Yadorao (AW-9), Pleader of Rajur-Manikgad. But he has not stated anything on this point. The petitioner has, therefore, failed to adduce any evidence in the matter and has thus failed to prove issues Nos. 9(a), (b) and (c).

84. *Issues Nos. 10(a) and (b).*—These issues relate to the allegations in para (3) (x) of the election petition in which it is alleged that on 28th February 1957. Paikan and Maroti Warpatkar along with Ramchandra Dharmaji Kunbi of Korpanna were beaten by the police officers between villages Pipri and Kosi when they were going for propaganda work to attend the polling booth on behalf of the petitioner and they were arrested and put in lock-up for nearly 8 hours at Siraj police station. In this connection, it is necessary to remember that Paikan and Maroti, who are the two of the three persons alleged to have been beaten, were not examined by the petitioner. Ramchandra (AW-17) was, however, examined. His story regarding beating by the police constables of himself, Maroti and Paikan cannot be believed in the absence of any corroboration. It does not also appear probable that he and his two other companions Maroti and Paikan were working for the petitioner during the last general election campaign. This is evident from the fact that according to him, one Mohammedan boy of Rajur told him to canvass for the petitioner about 4 days before the day of polling; but he does not know the name of the Mohammedan boy.

85. It is, however, true that as stated by Shriram Jani (AW-18), Station Officer, Siraj Police-station, told him, that Ramchandra, Maroti and Paikan were detained there for the offence of obstructing police officers and they were released on bail. Moreover, head constable Ramchandra Kondu (RW-2), who was working as head constable at Siraj police-station at the relevant time, has stated that he had arrested Paikan, Maroti and Ramchandra *alias* Ramu Koley for an offence under section 353 of the Indian Penal Code. He receives support in this respect from the documents, Exs. R-134 and R-135. In the latter of these two documents, which is a copy of the first information report, it is mentioned that Maroti and others were accused of an offence under section 353 of the Indian Penal Code. The version of Ramchandra (AW-17) does not, therefore, carry conviction and consequently the document Ex. A-19, which is a copy of the order whereby Ramchandra's complaint against Sayad Sadik Ali and others under sections 323, 342 and 171 (f) of the Indian Penal Code was dismissed for want of sanction for prosecution under section 196 of the Code of Criminal Procedure,

does not prove anything as regards the probability or veracity of Ramchandra's version. Thus, the petitioner has failed to prove that Ramchandra, Paikan and Maroti were his canvassers and that they were beaten by the police officers while they were going for propaganda work and to attend the polling booth on behalf of the petitioner.

86. *Issues Nos. 11 (a) and (c).*—These issues relate to para (3)(xii) of the election petition in which it is alleged that in thickly populated areas where tribals are in majority such as in villages coming under serial No. 52, Chichpalli, serial No. 53, Gondsawari etc., canvassers of respondent, namely, Anandrao Gawande, Chilke etc. made a propaganda that the petitioner did not belong to Gond tribe, "Shah" stood for Mohomedan and, therefore, they told the voters not to be misguided by the name "Shah" and this happened during the last week of February 1957. Thereafter, the petitioner in his statement of particulars dated 10th September 1957 stated that he said propaganda was made by Anandrao Gawande and Sakharan Chilke between 26th February 1957 and 1st March 1957 at villages Borda, Gondsawari, Pimpalkhut, Chichpalli, Zhantachowki, Waigaon, Nimabala, Walni, Zari, Peth, Ilaldi, Chiroli etc. It is also necessary to remember that in answer to interrogatories Nos. 3 and 4, the reply of the petitioner was that among the Gond Zamindars of Gadchiroli tahsil and the Gond Raja family of Chanda, the names of some of the male include the suffix "Shah" and the names of the several of the *Raj Gonds* end with the suffix "Shah".

87. Coming now to the evidence on the point, Bhagwatiprasad (AW-2), who belongs to Praja Socialist Party and who admittedly moved in the constituency for supporting the petitioner and also the members of his party who were the candidates for the assembly seats, states that he was informed by some people that they were told that the petitioner was a Musalman. He did not, however, state the name of the persons who informed him about the said propaganda. But, according to him, he told those people that the petitioner was a member of the Praja Socialist Party for a long time and that he knew that he was not a Musalman but a Gond. He also stated in his evidence that when he came to Pombhurna 2 or 4 days before the day of polling at Chanda, Madhorao Deotale of Pombhurna, a member of Janapada, told him that Wasekar and other Congress workers made a propaganda that the petitioner was a Musalman. But Madhorao Deotale though summoned, was not examined by the petitioner. The evidence of Bhagwatiprasad (AW-2), therefore, remains hearsay and it has no value.

88. Another witness on this point is Jagadish Salwey (AW-1), who was admittedly working for the petitioner. But, according to him he has not heard in his election tour in the constituency anybody canvassing that the petitioner is a Mohomedan and not a Gond and he used to tell the people that the petitioner was a Gond by caste. Thus, this evidence given by him negatives the petitioner's case.

89. Jagdish Salwey (AW-1) further stated in his evidence (para 4) that on 10th March 1957 in a public meeting at Chamorshi Shri Kannamwar told the people that it was a question whether the petitioner was a Gond. But Shri Kannamwar (RW-20, examined on commission), now Health Minister of the Bombay State, stated in his evidence that he did not say at the public meetings at Kurkheda and Chamorshi that public must verify whether Lal Sham Shah was a Gond or Muslim. He further says that he knew that the petitioner was a Gond. This evidence cannot be disbelieved in the circumstances of the case. In this connection, it is significant that the name of Shri Kannamwar was not mentioned either in the election petition or in the statement of particulars as one of those who made this kind of propaganda. The evidence of Jagadish Salwey (AW-1) in this respect is, therefore, unworthy of belief.

90. Another witness who has deposed in this respect is Ganpat (AW-6) of Chanda. According to him, at Chichpalli and Gondsawari on 26th February 1957, he found Anandrao Gawande and Sakharan Chilke in a jeep car with a loud-speaker and there they told the people on the loud-speaker that the petitioner was a Musalman and, therefore, they should not vote for him and if they elected him, there would be another Pakistan. He also stated that after they left the place, he told the people on the loud-speaker on behalf of Kotpalliwar and the petitioner that the petitioner was an *Adiwasi* and he further added that the people were not prepared to believe that the petitioner was an *Adiwasi* and they said that it would be better if he visited those places. This witness admittedly canvassed for the petitioner, Vishweashwarao, Wikey and Kotpalliwar. On this ground alone, his evidence is unreliable. Besides, he could not say the name of any person out of those who listened to the speeches of Chilke and Anandrao Gawande. His evidence does not, therefore, carry any conviction.

91. On this point the petitioner has also examined W. L. Kedari (AW-30) of Chichpalli, Tulsiram (AW-31) of Chanta-Chowki, Nagorao (AW-33) of Pimpalkhuta, Dhadu (AW-34) of Hardi and Manohar Kotpalliwar (AW-41) of Chanda. So far as W. L. Kedari (AW-30) and Manohar Kotpalliwar (AW-41) are concerned, they are highly interested in the petitioner. W. L. Kedari is, as admitted by him, the Honorary Secretary of the *Adiwasi Kalyan Karyalaya*, Chichpalli, opened by Shri Vishweashwarao. Thus, his interest in the petitioner, who is admittedly the President of the *Adiwasi Sava Mandal*, is obvious. Besides, he could not say

the names of even 3 or 4 persons whom Chilke and his companion addressed at Chichpalli, although he is a resident of Chichpalli. His evidence is, therefore, most unconvincing and interested and it is unworthy of any credence. Similarly, the evidence of Shri Manohar Kotpalliwar, who admittedly worked for the petitioner, cannot be believed in the absence of any independent corroboration.

92. So far as the evidence of Tulsiram (AW-31) is concerned, he stated that Yadoshah of Chanda used to come to his village and tell the people that the petitioner was his brother-in-law and he made such a propaganda a month and a half before the election and similar propaganda was also made by Shri Vishweshwarrao of Aheri. Thus, it appears from his evidence that the petitioner was well-known in that tract and this is confirmed by this witness, when he stated that in the last election the people of his village voted for the petitioner as against the Congress because the petitioner was their *Maharaj*. Consequently, the evidence of this witness appears to be interested and got-up.

93. Similarly, the evidence of Nagorao (AW-33) and Dhadu (AW-34) appears to be unconvincing. According to the version of these two witnesses, what he heard on the loud-speaker at a Monday market at Chichpalli 4 or 5 days before the polling, was that people should vote for Congress candidate and the petitioner did not belong to their caste. According to both these witnesses, they knew that the petitioner was of their caste because, as stated by them, Yadoshah *Maharaj*, who is Raj Gond and who is their leader, was telling the people for about a month before the election that the petitioner was his brother-in-law from Panabaras. It is, therefore, unlikely and unnatural that the Congress workers would make the alleged propaganda in question. The evidence of these witness, therefore, appears to be interested and invented and does not carry conviction.

94. This inference receives support from the fact that Zitru (AW-35) of Zari, Rama (AW-36) of Zaripeth, Goma (AW-37) of Lohara and Kesheo (AW-38) of Waigaon, though they were called to depose on the point in question, did not state anything regarding the alleged propaganda. On the contrary, Zitru and Goma stated that what they heard on the loud-speaker was that they should vote for the Congress candidate and they did not hear anything about the petitioner. The other two witnesses, namely, Rama and Kesheo, stated that they did not know what those people were talking on the loud-speaker. The respondent has also adduced rebutting evidence in this respect and Anandao Gawande (RW-9) has denied that he made any such propaganda. In view of the evidence of these persons, it appears that the version of the petitioner regarding the alleged propaganda by the Congress workers to the effect that he was a Mussalman and not a Gond, appears to be concocted in view of the fact that his name ends with the suffix "Shah".

95. In any case, even if there was any such propaganda, its effect was wiped out by the contrary propaganda made on behalf of the petitioner. In this connection, it is well to remember that in the leaflet Ex. A-59, Raje Yado Shah has stated that the petitioner is his brother-in-law. In the leaflet Ex. A-62, Manohar Kotpalliwar has stated that the petitioner is the President of the Adiwasi Seva Mandal. Similarly, Shri Vishweshwarrao has stated in the leaflet Ex. A-63 that the petitioner is his cousin (*Ate Bhau*) and there is a statement to the same effect in the posters Ex. A-64 to Ex. A-69. In view of this counter propaganda, even if it is assumed that the Congress workers made the propaganda in question regarding the caste of the petitioner, it was not reasonably calculated to prejudice the petitioner's prospects in election. In any case, there is nothing on record to indicate that the respondent had authorised his workers to make such a propaganda. It must, therefore, be held that any such propaganda, even if made, was not made with the consent of the respondent or his election agent and thereby the result of the election was not materially affected.

96. *Issue No. 11 (b).*—This issue refers to the latter part of para (3) (xii) of the election petition in which it is alleged that the supporters of the respondent also misrepresented and told the tribal women voters that there was no polling for women on 6th March 1957 and that the polling would be on the next day and this happened at the polling stations, Chichpalli, Gondawari, etc. No evidence is adduced by the petitioner on this point and the petitioner's own witness Bhagwatiprasad (AW-2) has stated that no women complained to him that she did not know as to on what day she was required to go to the polling station to vote. This issue, therefore, remains unproved.

97. *Issues Nos. 12 (a) and (b).*—These issues refer to para (3) (xiii) of the election petition in which it is alleged that the respondent agreed to the terms of the Scheduled Caste Federation and satisfied their demand of Rs. 25,000 and Barrister Rajabhau Khobragade and other leaders of the Scheduled Caste Federation requested the Scheduled Caste voters and induced them to vote for respondent. It is further alleged therein that the respondent also congratulated Barrister Khobragade on 23rd March 1957 for the latter's assistance to the former in furthering the prospects of his election and thus the respondent corruptly made payment and promises to the Scheduled Caste Federation and induced the members thereof to vote for him. In this connection, it is stated in para 6 of the statement of particulars dated 25th September 1957 that Shri Rajabhau Khobragade demanded Rs. 25,000 from Manohar Kotpalliwar and the petitioner at Chanda at Aheri bungalow on 4th February 1957 and there-

after the respondent agreed to the terms of the Scheduled Caste Federation and satisfied their demand on 7th February 1957 at Chanda at Khobragade's residence at 7 p.m. It is also stated therein that Rs. 8,000 were paid by Shri V. N. Swami to Shri Rajabhau Khobragade in the presence of Laxmanrao Khobragade, Madho Jairam Moon and Gopal Babu Niranjan on 7th February 1957 at Khobragade's residence at Chanda at about 7 p.m.

98. In this connection it is first necessary to refer to the evidence of Manohar Kotpalliwar (AW-41). According to his evidence, on 4th February 1957 he, Vishweshwarrao and the petitioner requested Barrister Khobragade at the Aheri bungalow at Chanda that the Scheduled Caste Federation should help their independent group and Barrister Khobragade agreed to help them on two conditions, the first condition being that he demanded Rs. 25,000 from them and the second condition was that they should withdraw their candidates from Chanda and Rajura, that is to say, he and Yadorao Dhote should withdraw and they should support the Scheduled Caste Federation candidates. They were not, however, as stated by him, prepared to pay him Rs. 25,000 and, therefore, their negotiations with Khobragade failed on that day.

99. But, as further stated by this witness, he again started the negotiations with Khobragade and on the night of 21st February 1957 he and Laxmanrao Regundwar went to Nagpur on receiving a phone message of Bacchrajji Vyas and then along with him they went to Bhandara and met Shri Khobragade at Lakhni and then they returned to Nagpur along with Barrister Khobragade and there the same talk took place which he had with Barrister Khobragade at Chanda; but in that talk Barrister Khobragade pressed for demand of money. As he further says, Barrister Khobragade then gave him a letter addressed to his father of which Ex. A-18 and Ex. A-18-A is a photograph taken by him. He also stated that he personally delivered at Bhaskarwar's place that letter to Barrister Khobragade's father Dewaji Khobragade (AW-14), who told him that until the demand for money was satisfied, no help was possible. It is, therefore, clear from his evidence that negotiations between him and Barrister Khobragade finally broke on 22nd or 23rd February 1957 and to the same effect is also the evidence of Barrister Bhaurao *alias* Rajabhau Khobragade (AW-13), who admitted on seeing the photograph Ex. A-18 that he might have written a letter of such contents to his father.

100. It is thus clear that till 22nd February 1957, Barrister Khobragade was negotiating with Manohar Kotpalliwar for rendering help to him. It was not, therefore, possible for him to negotiate with the respondent on 7th February 1957 for rendering him help of the Scheduled Caste Federation for his election, as alleged by the petitioner in his statement of particulars dated 25th September 1957. If before 22nd February 1957, as alleged by the petitioner, there was settlement between Barrister Khobragade and the respondent, Barrister Khobragade would have totally refused to negotiate with Manohar Kotpalliwar on 22nd February 1957 and would not have given him a letter, as he did, addressed to his father, of which photograph Exs. A-18 and A-18-A is filed on record. Thus, the evidence of Manohar Kotpalliwar (AW-41) and Barrister Khobragade (AW-13) shows the improbability of the version of the petitioner as regard the alleged settlement between the respondent and Barrister Khobragade on 7th February 1957. In this connection it is necessary to note at this stage that according to Barrister Khobragade's father Dewaji Khobragade (AW-14) he did not get any letter containing the contents of the photograph Ex. A-18 from his son and, therefore, he could not produce it although he was summoned to produce it. It is, therefore, possible that Manohar Kotpalliwar might have suppressed that letter.

101. It is, however, true that according to Manohar Kotpalliwar (AW-41), one Khobragade of Gilgaon showed him the letter of one Shrihari Khobragade, the brother of Barrister Khobragade, and Ex. A-11 is the photograph of that letter which he himself took and then he returned the original letter to that Khobragade after taking its photograph. Shrihari Khobragade (AW-15), however, says that he does not remember if he had written any letter of the contents of the photograph Ex. A-11 to Chokha Ramtake and Pundlik Khobragade jointly and Chokha Ramtake (AW-8) and Pundlik Khobragade (AW-16) stated that they did not receive a letter of those contents. But assuming that these two witnesses are not telling the truth and the version of Manohar Kotpalliwar in that respect is correct, contents of that letter only show that the petitioner has deceived the Scheduled Caste Federation and he should not, therefore, be supported and that Congress also should not be supported. Consequently, the petitioner's case regarding the settlement between the respondent and Barrister Khobragade does not receive any support from that letter and on the contrary it is negated by it.

102. Barrister Khobragade himself (AW-13) clearly stated that he on behalf of the Scheduled Caste Federation did not negotiate with the Congress candidates, presumably the respondent, for supporting him in his election and he had no talk even with any congress worker regarding the support of the Scheduled Caste Federation for the election of the respondent. As further stated by him, in fact there could not be any talk between the members of the Congress party, and the members of the Scheduled Caste Federation, because their aim was to defeat the Congress. There is thus nothing on record to indicate that there was settlement between the respondent and Barrister Khobragade for rendering help of the Scheduled Caste Federation in the election of the respondent and on the contrary the probabilities and the

surrounding circumstances indicate otherwise. This inference further receives support from the fact that there is evidence on record to show that on 7th February, 1957, the respondent was not at Chanda but he was on that day in Rajura tahsil at Warud, Chandur and Kodsi. In support of this fact, besides the evidence of respondent Shri Swami (RW-18), there is also the evidence of Shri Shankarrao Deshmukh (RW-1), pleader of Rajur, Nilkanthrao Diwanji (RW-4) and Shri Kannamwar (RW-20), examined on commission). There is no reason to disbelieve their evidence in this respect.

103. Their version receives support even from Jagadishrao Salway (AW-1, para 13). Even the copy of the programme of Shri Kannanwar and respondent Shri Swami in Rajur tahsil (Ex. A-71, corresponding to Ex. R-86) is filed by the petitioner and it shows that public meetings and meetings of the congress workers were to be addressed by them at Rajura, Warud and other places mentioned in them from 6th February, 1957, to 8th February, 1957. Thus, in view of all this evidence regarding the absence of the respondent from Chanda on 7th February 1957, the story set up by the petitioner regarding the settlement between Barrister Khobragade and the respondent on that day cannot be believed and it evidently appears to have been invented simply for the purposes of propping up the election petition.

104. This information which is found to be false was supplied to the petitioner by his agent R. P. Tekam (AW-42), who stated that he had informed the petitioner regarding the payment of Rs. 8,000 by Shri Swami for procuring Harijan votes. In this connection, it is also significant to note that according to the petitioner's election agent Vishweshwarrao (AW-43), he had received the information between 29th January, 1957 and 4th February, 1957 regarding the pact between the respondent and the Scheduled Caste Federation and yet he did not so far disclose to anybody the name of the man from whom he got that information. It was in fact impossible for him to get that information when according to the petitioner's case the fact of settlement between Barrister Khobragade and the respondent took place on 7th February, 1957.

105. This inference also receives support from the fact that the three persons, namely, Laxmanrao Khobragade, Madho Jairam Moon and Gopal Niranjane, who were said to have been present at the time of the payment of Rs. 8,000 by the respondent to Barrister Rajabhau Khobragade on 7th February, 1957 at 7 P.M. at the latter's residence, though summoned, were not examined by the petitioner. The obvious inference from this fact is that they were not prepared to support the allegations of the petitioner in this respect. These persons, as it appears from the documents Ex. R-64 and Ex. R-82-B to Ex. R. 82-F were seceders from the Scheduled Caste Federation and were making a propaganda against Khemdeo Rangari, a candidate of the Scheduled Caste Federation.]

106. In this connection, it is also well to remember that as stated by Barrister Khobragade (AW-13, para 10), although the Scheduled Caste Federation had declined to support Kotpalliwar, Laxman Khobragade, Hiranman and Madho Moon, Gopal Niranjane, Sant Master and others supported the petitioner and Manohar Kotpalliwar and disciplinary action was taken by the Scheduled Caste Federation against Laxmanrao Khobragade, Gopal Niranjane and Moon. This fact also receives support from Upasrao (RW-11). In any case, those three persons, namely, Laxmanrao Khobragade, Gopal Niranjane and Madho Moon were against the Congress. This is also evident from the leaflet Ex. R-82-G issued by L. N. Khobragade and Hiranman Moon. They had also grudge against the members of the Scheduled Caste Federation who had expressed no confidence against them. If, therefore, they knew anything regarding the payment of any money by Shri Swami to Shri Khobragade, they would have certainly come forward to depose about it. Therefore, the fact that they were not prepared to support the petitioner in that matter, clearly shows that the petitioner's story in this respect is imaginary and invented for the purposes of the election petition.

107. The learned counsel for the petitioner, however, emphasised in this connection the facts stated by Shri Swami (RW-18 para 70) that he thanked Khobragade after the election on his own behalf because he struck to some principles without succumbing to money and on behalf of Wasekar he thanked him for not withdrawing Khemdeo Rangari. The petitioner also relies on the caution given in the leaflets Exs. A-16 and A-17 issued by Shri Khobragade that the Scheduled Caste people should not allow themselves to be influenced by the canvassing of any candidate for the House of the People. But only from these facts, in the absence of any other surrounding circumstances, the inference cannot be drawn that there was payment of money by the respondent to Shri Khobragade and settlement between them, as alleged by the petitioner. In this respect, as has been already explained, the probabilities and surrounding circumstances in the matter of the alleged case in question are against the petitioner. I, therefore, find that the petitioner has failed to prove issues Nos. 12(a) and (b).

108. *Issues Nos. 13(a), (b) and (c).*—These issues relate to para (3)(xiv) of the election petition and they refer to the petitioner's contention that the nomination paper of Shri Kannamwar, a candidate from Saoli Legislative constituency was improperly accepted by the Returning Officer and the election front of Shri Kannamwar and the respondent being joint, it created a sort of political influence upon the mind of electors and thus the electors who were made to vote for Shri Kannamwar also voted for the respondent and that has materially

affected the result of the election. Here, it must be noted that Shri Kannamwar's election is not called in question and, therefore, the question whether Shri Kannamwar's nomination paper was improperly accepted is irrelevant, so far as the question of the election of the respondent is concerned. Besides, during the cross-examination of Shri Kannamwar (RW-20 examined on commission), no attempt was made on behalf of the petitioner to show that his nomination paper was improperly accepted by the Returning Officer. Documents Exs. A-74 and A-75 are the copies of nomination papers of Shri Kannamwar and Ex. A-76 is a copy of the order of the Returning Officer, rejecting the objections and accepting the nomination paper of Shri Kannamwar for Saoli Legislative Assembly Constituency. No other evidence was adduced by the petitioner to show that the acceptance of Shri Kannamwar's nomination paper was improper. It cannot, therefore, be said that the acceptance of Shri Kannamwar's nomination paper has materially affected the result of the election.

109. Similarly, as regards the political influence of Shri Kannamwar, who was a Minister of the Bombay State at the time of the election and is even now occupying that position, such an influence cannot be ruled out, because even being a Minister, he was entitled under the Constitution and the Act to contest the election. What is objectionable under the Act is undue influence and not legitimate political influence and, therefore, even assuming that the electors who voted for Shri Kannamwar also voted for the respondent, it cannot be said that thereby the result of the election concerning the respondent has been materially affected.

110. *Issues Nos. 14 (a) and (b).*—These issues relate to para (3) (xv) of the election petition. In this respect the petitioner stated in his statement of particulars dated 25th September, 1957 and Shri Tadarwar on his own behalf and also on behalf of the respondent paid Rs. 600 to the school committee at Kohregaon on 8th March, 1957. But none from Kohregaon or from any other place was cited or examined by the petitioner in this respect. It is, therefore, clear that the petitioner has failed to prove these issues and I find accordingly.

111. *Issue No. 15.*—This issue refers to the allegations in the election petition contained in para (3) (xvi) thereof. In this connection in the statement of particulars dated 25th September, 1957, it is stated by the petitioner that Mahadeo Sangji of Desai Ganj brought the voters to the booth in motor car owned by him. No attempt has been made by the petitioner to prove this fact. Besides, Narayansing Wikey (AW-23), who was himself a candidate for election to Legislative Assembly from Sironcha constituency and who also worked for the petitioner during the last general election campaign, has stated that he did not see before he left Desai Ganj on the day of polling, presumably on 11th March 1957, Mahadeo Sangji's car taking voters at that place for the respondent. He is himself a resident of Desai Ganj and, as stated by him, he did not see Mahadeo Sangji on that day at Desai Ganj and did not see him there during the whole election campaign. The report made by him to the Presiding Officer, Desai Ganj, refers to the use by Congress candidates of bullock-carts for bringing Mohomedan women voters from Kamlanagar ward (*vide* Ex.A-77). But in the petitioner's particulars referred to above, there was no mention of the use of bullock-carts.

112. However, Narayansing (AW-23) further stated that when he stopped near the polling station at Wadegaon, he saw Mahadeo Sangji's car carrying voters. According to him, there were 2 or 3 voters of Chikhli and Rashid Patel was in that car and he immediately made a complaint to the Presiding Officer but did not point out to him the particular voters who had come in the car. He has also stated that he did not enquire from other persons as to whether the persons who were carried in that car were voters and he did not also make any enquiry from other persons whether any voters were being carried in a car for the respondent or for any other candidate. As he further says the report, of which Ex. A-29 is a copy, was made by him from the information received by him at Wadegaon. But it is surprising to see that he cannot say the names of the persons who gave him that information and he does not also remember the villages where those persons resided. He did not even make any enquiry either from polling agents or from other persons as regards the identity of those persons who were carried in the car of Mahadeo Sangji. Finally, his statement is that because Rashid Patel was sitting in the car, he says that the other persons who were sitting in the car were voters.

113. Thus, the evidence of Narayansing is most unconvincing and it shows that he made the report to the Presiding Officer, Wadegaon, *vide* Ex. A-29, without any enquiry and verification and he had no knowledge of the facts contained in that report. This is confirmed from the Presiding Officer's endorsement on Narayansing's application that he enquired from about 12 to 15 persons of Chikhli and none admitted to have come in car and as the candidate failed to produce any witness the complaint was rejected. In this respect it is necessary to note that though in the document Ex. A-29, in the endorsement by the Presiding Officer, words "some admitted" are mentioned, in fact the corresponding words in the original are "none admitted" which have been correctly reproduced in the copy Ex. R-105 filed by the respondent.

114. Moreover, Domaji Dahikar (RW-7), retired station-master of Desai Ganj, has explained in his evidence that after Narayansing Wikey left in his car towards Kurkheda, he along with Pandit Gyanchand, Rashid Patel and Ali Mohammad went in Mahadeo Sangji's car from Desai Ganj upto Wadegaon. Polling Officer, Wadegaon, as he says, was enquiring in the boundary of the polling station whether any voters had come by car but none told him that any voters were seen coming in car or had come by car. Rashid Patel, as further stated by him, was asked by the Presiding Officer, as to how he came there and he gave him in writing that he had come to supervise the polling work for the respondent and Narayansing Wikey did not point out to the Presiding Officer that any particular voter had come by car. There is no reason to disbelieve his version.

115. Thus, the evidence of Narayansing Wikey (AW-23) is unconvincing and it has been satisfactorily rebutted by the evidence of Domaji Dahikar (RW-7). The petitioner has, therefore, failed to prove issue No. 15.

116. *Issues Nos. 16(a) to (c).*—These issues relate to para (3)(xvii) of the election petition. The purport of those allegations is that Pandurang Hemke and Raghunath Sorte, Janapada teachers working under Gadchiroli Janapada Sabha, worked for Congress candidates at polling stations Nos. 20 and 21 at Armori and their canvassing was calculated to influence rustic voters of the locality. In this connection, document Ex. A-78 which is a copy of the report of the Presiding Officer of polling stations Nos. 20 and 21 at Armori, only shows that Pandurang Hemke, a teacher in the Japanada M. M. School, Armori, who was polling clerk on duty at Arsoda, went to exercise his vote at Armori, with his official badge of polling clerk pinned on to the collar of his coat and that another polling clerk of Arsoda had also come to Armori to cast his vote at polling station No. 22. There is no mention therein that any of the said two teachers indulged in any canvassing at polling stations Nos. 20 and 21. The petitioner has not also examined either the complainants concerned or the Presiding Officer of those polling stations. The said two teachers, though summoned, were also given up and similarly Narayana Rao Neral of Armori, though summoned, was not examined by the petitioner. In these circumstances, it must be held that the petitioner has failed to prove the allegations regarding issues Nos. 16(a), (b) and (c) and they remain unproved.

117. *Issues Nos. 16(d) and (e).*—These issues refer to para (3)(xviii) of the election petition. The petitioner has now, however, adduced any evidence in support of the said allegations and he has given up one Narayan Balaji Neral of Armori, though summoned. These issues, therefore, remain unproved.

118. *Issues Nos. 17(a) to (d).*—These issues refer to the allegations in para (3)(xix) of the election petition. The only witness examined by the petitioner in this connection is P. R. Linge (AW-12), who worked as Presiding Officer at Shegaon booth No. 25, where the polling took place on 11th March, 1957. But according to him, he did not hear anybody telling him that the Congress people were making the propaganda that military force was coming at that place. He also says that he does not remember if there was rain on the night of 10th March, 1957 and he does not know whether on the morning of 11th March, 1957, Gadwhi river, near Armori, was in floods and he does not know whether the voters from Chamorshi and Rampur were required to cross the river to come to Shegaon. Thus, from his evidence, no allegations made by the petitioner regarding issues Nos. 17(a) to (d) are proved. It is, however, true that in the reports of the Presiding Officers of polling stations Nos. 20 and 21 at Armori, it is mentioned that there was very heavy rain during the whole night of 10th March, 1957. But there is no evidence adduced by the petitioner to show that any of the canvassers of the respondent misrepresented and told the voters that due to rains there would be no polling on 11th March, 1957. Thus, the petitioner has failed to prove his case in this respect.

119. *Issue No. 18.*—This issue relates to the allegations contained in para (3)(xxi) of the election petition. In this connection the only evidence adduced by the petitioner is of Bajirao of Aheri (AW-20). According to him, on being asked by Shri Vishweshwarrao, he went in Vishweshwarrao's car to give a message to Gaddamwar who resides in Ghotsur Ilakha near Bastar. He then, as he says, told the message of Vishweshwarrao to Gaddamwar and requested him to accompany in the car but he told him that he had already decided to work for the respondent and, therefore, he could not go to Vishweshwarrao. He also stated that thereafter Gaddamwar told the people at Gatta that if they voted for bow and arrow they would be taken by Vishweshwarrao to the war front. His evidence sounds like a cock-and-bull story. This witness was a servant of Aheli Zamindar for about 20 or 25 years and was making election propaganda for Vishweshwarrao for about a month. He is thus highly interested in Vishweshwarrao and, therefore, he is also interested in the petitioner. Consequently, in the absence of any independent corroborating evidence, which the petitioner has failed to produce, it is risky to rely on such artificial, uncorroborated and interested evidence. The petitioner has thus failed to prove his allegations in this respect.

120. *Issue No. 19.*—This issue relates to the allegation in para (3)(xxii) of the election petition. It was struck out in pursuance of the Tribunal's order dated 18th September, 1957, as it was conceded by the learned counsel of the petitioner that the said para and the para

(3) (xlv) relates to the same matter and therefore, para (3) (xxii), which was less specific, should be omitted. The decision on this issue does not, therefore, arise and it need not be considered.

121. *Issues Nos. 20 (a) to (d).*—These issues relate to para (3) (xxiii) of the election petition. In this respect Ex. A-12 is a copy of the telegram dated 9th February, 1957 issued by R. P. Tekam (AW-42) to the Election Commission, New Delhi, in which it was alleged that Government machinery, particularly forest officials, was used for securing votes by Congress. Thereafter, the Returning Officer by letter dated 13/23rd February 1957, of which Ex. A-13 is a copy, asked R. P. Tekam to give specific instances of the nature complained of in his telegram. In reply to that letter, R. P. Tekam stated in his letter dated 26th March 1957, of which Ex. A-14 is a copy, that it has been brought to his notice that the forest guard Angara asked the voters of Navejhari under Kulkuli polling station to vote for Congress on 7th March, 1957 and further threatened that if they did not put their votes in the boxes having symbol of bullocks, they would be arrested.

122. In this respect there is the evidence of Raghoba (AW-24) of Malewada, Baburao (AW-25) of Malewada and Shiwa (AW-28) of Angara. But Raghoba (AW-24) was working as polling agent for the petitioner. Similarly, Baburao (AW-25) worked for the petitioner and Narayansing Wikey in the last general election campaign and he is also one of the workers of Adiwasi Mandal for the last 10 years. Thus, they are highly interested in the petitioner. It is also surprising to note that Raghoba did not make any written report or oral report to any Government officer against the forest guard who made the propaganda in question and did not also make any written report to the petitioner about that forest guard. It is still more surprising to find that he does not remember the names of the persons to whom the forest guard made the propaganda or gave the threats. To the same effect is also the evidence of Baburao (AW-25) who, as stated by him, for the first time informed Tekam of that propaganda when he had come to collect information for election petition and even at that time he did not point out to Tekam the persons before whom propaganda was made by the forest guard. Thus, the evidence of these two witnesses is highly artificial and interested and it is not worthy of any reliance.

123. So far as Shiwa (AW-28) is concerned, he is not aware of any enquiry made against that forest guard, namely, Hafir and he told about the incident to Chindhu Patil, a Gond of Angara, and to none else so far. This witness for the first time discloses the name of the forest guard. But he did not enquire as to who were the candidates for the Legislative Assembly at the place and time where the alleged propaganda was being made by the forest guard. According to him, he had gone that day to Navejhari to secure paddy from Rushi Patil but he did not find him there and he returned and thereafter he did not take any loan of paddy from any other person. It is, therefore, highly doubtful if he was present at the alleged propaganda in question at Navejhari. But even if he was present there, he was a chance witness. He appears to have been got-up and his evidence does not appear to be reliable in the circumstances mentioned above. Consequently, the petitioner has failed to prove these issues. It is also necessary to note in this connection that a forest guard does not come under the provisions of sub-section (7) of section 123 of the Act.

124. *Issue No. 21.*—This issue relates to para (3) (xxiv) of the election petition in which it is alleged that it is learnt from Gyanba of Charvidand, Shiwa Wikey of Angara and others that at Malewada misunderstanding and misrepresentation was made by Maroti Narote, who was accompanied by Namdcorao Poraddiwar, Jiwan Patil of Angara and Shri Ganguwar, pleader of Gadchiroli, and Habib s/o Rashid Patel, by telling the people of that area that the petitioner did not belong to Gond community and he was contesting the election to bring back British rule and to get back his Zamindari. The petitioner has examined in this connection only Gyanba (AW-26) of Charvidand. He is evidently interested in the petitioner, as he worked for him and he was also his polling agent during the election in question.

125. According to him, Shri Ganguwar, pleader, was not seen at Malewada when Narote made a propaganda in question and he cannot say the names of the persons who were present at that time. He also says that Narote did not say that the petitioner was not a Musalman but what he said was that the petitioner was not of their caste, meaning thereby that he was not a *Raj Gond*. It is also significant that, as stated by this witness, he knows that the petitioner is a *Raj Gond* but he did not say at the time of Shri Narote's propaganda in question that the petitioner was of his caste and he kept silent because question of caste was not concerned with the election. In these circumstances, his evidence is obviously interested, discrepant and does not carry conviction. The petitioner has, therefore, failed to prove the allegation covered by this issue.

126. *Issues Nos. 22 (a) and (b).*—These issues relate to the allegations in para (3) (xxv) of the election petition and the particulars regarding those allegations are stated in para 7 (xvii) of the petitioner's statement of particulars dated 10th September 1957. The petitioner, however, has not given any evidence on this point. Moreover, a Tribal Welfare school teacher does not come under sub-section (7) of section 123 of the Act and there is no

evidence to show that the services of the teacher in question were obtained or procured by the respondent or his agent or by any other person for the furtherance of the prospects of the respondent's election. The issues Nos. 22(a) and (b), therefore, remains unproved.

127. *Issue No. 23.*—This issue relates to the allegation in para (3) (xxvi) of the election petition. But Shri Ganguwar, pleader and Newasu, though summoned by the petitioner, were not examined. The only witness examined by the petitioner on this point in Gyanba (AW-26) of Charvidand. According to him, Newasu s/o Dhudsu Gond of Murmadi told him at Malwada that he was paid Rs. 10 by Shri Ganguwar, pleader, of Gadchiroli, for voting for the respondent and also for canvassing for him. His evidence, in the absence of the examination of Newasu, becomes hearsay. Moreover, he did not ask Newasu where and at what time he was paid Rs. 10 and he did not also enquire as to which persons were present at the time and place of the said payment. If in fact he had received any such information, he would have at once informed the petitioner or any of his workers and would not have kept silent about it, as he did. He is a man who, as already stated, was working for the petitioner. His evidence, therefore, appears to be got-up and in any case it cannot be believed in the absence of any independent corroboration. The petitioner has, therefore, failed to prove this issue.

128. *Issues Nos. 24(a) to (d).*—These issues relate to para (3) (xxvii) of the election petition. In this connection, no evidence is adduced by the petitioner and even Kotwar Thusya, who was summoned, was not examined by the petitioner. Those issues, therefore, remain unproved.

129. *Issues Nos. 25(a) to (e).*—These issues relate to allegations in para (3) (xxviii) of the election petition. In this connection, Bhajan Urkuda Meshram of Kulkuli was summoned but not examined by the petitioner. Besides, the document Ex. R-110, which is an order of appointment of Patel of Kulkuli, shows that one Urkuda S/o Raghu was appointed as a Patel of Kulkuli on 31st July, 1952. It is also pertinent that Shri Anwikar (AW-10), who was working as Election Officer for all the constituencies in the Chanda district, including the Chanda Parliamentary Constituency, says in his cross-examination (para 14) that Bhajan Urkuda Meshram was the agent of Namdeorao Poreddiwar, the assembly candidate and not of the respondent at Kulkuli polling station. It is, therefore, clear that the petitioner has failed to prove all these issues.

130. *Issue No. 26.*—This issue relates to the allegations contained in para (3) (xxix) of the election petition. In this connection, it is stated in the petitioner's statement of particulars dated 25th September, 1957 that conveyances of Mahadeo Sangji of Desai Ganj were arranged on 11th March, 1957 to bring the voters to the polling booth at Wadegaon on behalf of the Congress candidates. The petitioner thus failed to give the names of the persons who are said to have arranged conveyances for voters for taking them to Wadegaon. On this point, the evidence of Narayansing (AW-23) and reports made by him (*vide* documents Ex. A-29 and Ex. A-77) have been already considered and it has been shown that during the enquiry by the Presiding Officer, Wadegaon, Narayansing Wikey failed to prove his allegations in question (*vide* Ex. A-29 corresponding to Ex. R-105). The petitioner has also examined one Narayanrao Kangale (AW-40) of Gwardha in this connection. But he has stated that he did not himself see the voters being brought in Mahadeo Sangji's car to the polling station at Wadegaon and he reached there while the enquiry was going on. He is the petitioner's man, as he has worked for him and the candidates belonging to his party and he has been working for Adiwasis since about 25 years. His evidence is thus interested and unreliable.

131. It is also necessary to note in this connection that he stated that in this presence Presiding Officer of Wadegaon had seized a car of Mahadeo Sangji of Gondia and the driver of that car was also arrested. But the document Ex. A-85, which is a copy of the proceedings taken by the Presiding Officer Wadegaon on 11th March, 1957 on the complaint of N. S. Wikey, shows that there was no seizure of any car by the Presiding Officer but that statement of one Abdul Rashid Khan as to why he had brought car No. C.P.T. 79 to Wadegaon was taken and Abdul Rashid Khan stated that he had come to see the booth and thereafter he was asked not to bring any voters in his car. It is, therefore, clear that Narayanrao (AW-40) has drawn on his imagination and has told a story regarding the seizure of the car or arrest of the driver which is false. On this point the evidence of Domaji Dahikar (RW-7), which has been already discussed, shows as to how and why Mahadeo Sangji's car was taken by him and other workers of the respondent to Wadegaon. As stated by him, it was taken only to follow Narayansing Wikey's car to Wadegaon, because it was suspected that Narayansing Wikey would make false complaints at other polling stations also, as he did at Desai Ganj. Thus, the petitioner has failed to prove that any conveyances were arranged to bring the voters at polling station Wadegaon on behalf of the Congress candidates.

132. *Issues Nos. 27 (a), (b) and (c).*—These issues relate to the allegations in para (3) (xxx) in the election petition in which it is alleged that respondent's canvasser Rashid Patel of Nanhi paid Rs. 20 to Budhaji Madavi on 9th March, 1957 at Kurkheda and assured him to pay Rs. 80 more at Malewada on 10th March, 1957 and the amount was given to Budhaji so that he should refrain from canvassing and working for the petitioner. In this connection, there is the evidence of Budhaji (AW-27) of Ramgad. According to him, respondent's worker Rashid Patel of Nanhi met him at Kurkheda market about 8 or 10 months ago when Gyanba was accompanying him and Rashid then took both of them to the house of Haji Abdul Gani where he offered Rs. 100 to him for canvassing for the respondent and he paid him Rs. 20 and he promised to pay him the remaining Rs. 80 at Malewada market. But he did not find him at Malewada and therefore, he did not work for the respondent.

133. As he stated in his cross-examination (para 3), Rashid Patel promised to pay him Rs. 100 for working within the area of three booths, namely, Khedegaon, Purada and Ramgad and at that time polling was only eight days ahead. He also stated that on the day on which he was paid Rs. 20, presumably on 9th March, 1957, Rashid Patel, according to him, had given him about 200 pamphlets for distribution in the villages and also for making oral propaganda and he distributed those pamphlets at Ramgad and did not do any other propaganda.

134. His version in this respect appears to be unnatural. It is also improbable and unconvincing because, as stated by him, he was working as an agent for the petitioner at Ramgad without any remuneration and he was also paid Rs. 5 by Tekam for purchase of white writing papers about 3 or 4 days before the polling day. It is also significant that according to him he did not inform Tekam on the day on which he received Rs. 5 from Tekam that he had received Rs. 20 from Rashid Patel but he told him about it after the result of the election was declared. It is also necessary to note that R. P. Tekam (AW-42) was admittedly at Kurkheda on 9th March, 1957. On that day, as stated by R. P. Tekam (para 12), he asked Budhaji whether he would work for the petitioner and Budhaji said that he had already received Rs. 20 on that very day out of the promised amount of Rs. 100 from Rashid Patel for working for the respondent. This is evidently false because under receipt dated 9th March, 1957, he admittedly paid the amount of Rs. 5 to Budhaji and his explanation that he paid that amount to Budhaji on 10th March 1957 at Malewada is an afterthought and cannot be believed. Budhaji was, therefore, engaged by Tekam on 9th March, 1957, if not before, and therefore, Budhaji's version that he was offered Rs. 100 and paid Rs. 20 by Rashid Patel at Kurkheda on 9th March, 1957 for working for the respondent is evidently false and invented.

135. In this connection Gyanba (AW-26) has attempted to support the version of Budhaji (AW-27). He is, however, the petitioner's man, as he admittedly worked for the petitioner and Vishweshwarrao for about 8 to 15 days before the polling. It is significant that so far he has not complained to anybody either in writing or orally regarding the offer of Rashid Patel to Budhaji but he had told only Tekam about it on the polling day at Malewada. His evidence, like the evidence of Budhaji, appears to be artificial and got up simply to support the allegations in the election petition and it is not worthy of any belief.

136. Moreover, Tansing (RW-6), who is the *Kamdar* of Haji Abdul Gani and who is said to have been present at the alleged payment of money to Budhaji by Rashid Patel, has stated that two days before the polling of Kurkheda, there was weekly market day at Kurkheda and on that day Budhaji S/o Sarju of Ramgad did not come to his shop or *Dada* and there was no talk between him and Rashid Patel or there was no transaction of payment of money between them in his presence at his shop. There is no reason why this evidence should be disbelieved and it appears to be reliable, especially because of the artificial and unsatisfactory nature of the evidence adduced by the petitioner. Considering all these facts, I find that the petitioner has failed to prove the allegations concerning these issues. Rashid Patel, however, as admitted by the respondent Shri Swami (RW-18) had voluntarily canvassed for him.

137. *Issues Nos. 28 (a) to (c).*—These issues relate to para (3) (xxxi) of the election petition. The first part of those allegations is regarding the misguiding of voters, who were to cast their votes at Pendhri polling station, by respondent's canvassers Mohammad Khan Pathan and Mohammad Shiraj of Gadchiroli, who were said to have told those voters that due to rains, the polling was cancelled. In this connection, the petitioner has examined Mehrar Kowey of Murangaon (AW-29), who has stated that Shiraj Miya and another Pathan Congress worker were said to have told the voters that there would be no polling on that day on account of rains and so the voters told him accordingly. His evidence is thus hearsay. Besides, he is the petitioner's man, as he worked for the petitioner and for the other candidates of the petitioner's group during the last general election campaign and in the absence of independent corroboration it is extremely risky to rely on his evidence. He cannot also say the names of those voters who informed him that they were told that the polling was

closed on account of rains and he did not note down their names. Thus, this man's evidence cannot be believed in the absence of independent corroboration and no other evidence has been adduced by the petitioner in this respect.

138. As regards the allegations in the latter part of para (3) (xxxi) of the election petition regarding the dragging of two blind voters, namely, Mahagi and Guji, to the polling station by Congress workers and regarding the threats said to have been given to them, there is the evidence of A. M. Pawade (AW-11), who was working as Presiding Officer at Pendhri on 11th March, 1957. According to him, the two old and blind women complained to him that they were brought by force to the polling station by workers working for symbol of bullocks and they also told him that they were threatened by those persons that if they did not vote for bullock symbol, they would be beaten. The copy of his report is Ex. A-16 but it only mentioned that those two women, namely, Mahagi and Guji, told him that they were dragged to the polling station and threatened and it is not mentioned therein as to who dragged and threatened them. It is also significant that, as admitted by him, he did not take a written report from the two women who complained to him about harassment and he did not even ascertain from them as to the names of the persons in whose presence the incident occurred. He also did not enquire from any other persons, besides those women, regarding the truth of their version.

139. It is further necessary to note that as stated by A. M. Pawade, the police constables were posted within 100 yards of the polling station and no police officer complained to him regarding the occurrence about the dragging and threatening of those two women and he did not even ask the police of enquire regarding the occurrence reported to him by the two women. It, therefore, appears that he himself did not attach any importance to the version of those two women. In these circumstances, his version cannot be relied upon in the absence of the examination of those two women whom the petitioner has failed to examine.

140. There are, however, two other witnesses examined by the petitioner, namely, Meharu (AW-29) and Binduram (AW-32) of Murumgaon. Binduram was a *Kamdar* of the petitioner till 1951 and was working as one of the principal members of the Chanda District Congress Adiwasi Seva Mandal. He did not even ask those women or the *Pathans* as to why they were being carried by force and the reasons for this given by him is that he had to go a long distance of 20 miles to Murumgaon to cast his vote. He has not also disclosed that occurrence to anybody so far. He is, therefore, interested in the petitioner and also a chance witness and it is risky to rely on his version.

141. Similarly, the evidence of Meharu (AW-29) is interested, because he worked for the petitioner. His version regarding the dragging and threatening of the two women by Mohammad Khan Pathan and Mohammad Shiraj does not, therefore, appear to be reliable, especially in the absence of the examination of those two women.

142. Moreover, Mohammad Khan (RW-13) of Gadchiroli has stated that on the day of polling (11th March 1957), he was at Chichoda and not at Pendhri and he was not working for any candidate during the last general elections. Similarly, respondent Shri Swami (RW-18) has stated in his evidence that he does not know Mohammad Pathan and Mohammad Shiraj of Gadchiroli and he had never asked them to work for him. There is no reason to disbelieve him in this respect. It cannot, therefore, be said that he had instructed those persons to work for him. Even assuming that the two Congress workers dragged and threatened those two women at Pendhri, it cannot be said that it was done with the consent of the respondent. Besides, the respondent's election would not be materially affected by such incident regarding only two women voters. Thus, in view of all these circumstances, I find that the issues in this connection have not been proved by the petitioner.

143. *Issues Nos. 29 and 39.*—These issues relate to paras (3) (xxxi) and (3) (xli) of the election petition respectively. In this respect, according to Mohammad Wajir Ali (AW-19), who was the petitioner's polling agent at Talodhi Mokasa, on the polling day, within a distance of about 100 yards where a red flag was hoisted, posters exhorting the people to vote for the Congress were affixed to the bamboo fencing and he orally complained about it to the polling officer but the polling officer said that after the arrival of the police he would remove them but those posters remained there till about 2 or 2.30 p.m. and when by that time they were not removed, he made a written application to the polling officer of which Ex. A-21 was a copy.

144. It is true that the document Ex. A-21 contains an allegation that the posters of the Congress candidates were in the area of 100 yards from morning till noon and on the report of the complaint to the Presiding Officer, they were immediately removed. In this connection the endorsement of the Presiding Officer also contains a remark that the action was taken immediately after the matter was reported to him. This remark receives corroboration from Yadorao (RW-12), who was a polling agent at Talodhi Mokasa on the day of the

respondent. According to him, as soon as Wajir Mohammad, petitioner's agent complained to the Presiding Officer at about 2 p.m. on 11th March, 1957 that there was an election poster affixed to the wall of one Goma Dhiwar within the boundary of 100 yards of the polling station, the Presiding Officer went there along with him and others and found that it was a small election poster affixed to the inner wall of Goma Dhiwar's house which could be seen when tatta screening of the door was opened and the Presiding Officer removed that poster. That poster, as further stated by him, contained a photo of Jawaharlal Nehru and was issued by Congress Party but he had not asked Goma to affix that poster to his wall.

145. In the circumstances of the case, this version of Yadorao (RW-12) is more reliable than the version of Wajir Mohammad (AW-19) referred to above. In any case, there is nothing on record to show that the respondent or any of his workers asked said Goma to affix that poster to his wall. The mere fact, therefore, that the poster was found affixed to Goma's inner wall on the day of polling would not constitute non-compliance of the provisions of section 130(c) of the Act for which the respondent or any of his agents could be held responsible. In any case, such trivial act did not materially affect the result of the election concerning the respondent.

146. *Issues Nos. 30(a) and (b).*—These issues relate to para (3) (xxxiii) of the election petition which were struck out according to the Tribunal's order dated 18th September, 1957. They do not, therefore, arise for any decision.

147. *Issues Nos. 31(a) to (d).*—These issues refer to the allegations contained in para (3) (xxxv) of the election petition regarding a false complaint said to have been made by the respondent against Vishweshwarrao, active supporter and election agent of the petitioner. It is also said that by that complaint the respondent asked for police force at Aheri, Sironcha etc., where he apprehended heavy polling for the petitioner but the complaint was found to be false and baseless by the District Superintendent of Police. Ex. A-72 is a copy of the said complaint made by the respondent to the District Magistrate, Chanda, and not to the District Superintendent of Police, Chanda. In this connection, the respondent Shri Swami (RW-18) has stated in his deposition (para 8) that the contents of the copy of the complaint Ex. A-72 are true. In his cross-examination (para 81) he stated that his complaint was based mostly on the information he received from one Mohan Babu, one Nirmal, retired Sub-Inspector, Vasant Poreddiwar, Ramchandra Gaddamwar of Ghotsur, one Gubbewar of Aheri and his own personal experience on two occasions at Aheri.

148. It is also necessary to note in this connection that according to Vishweshwarrao (AW-13), he had not informed the petitioner that the respondent had made an application to the District Superintendent of Police, Chanda, regarding threats etc. As he says, he had no talk with the District Superintendent of Police, Chanda, regarding that application and for the first time he saw that application in Court. It, therefore, appears that the District Magistrate or the District Superintendent of Police, Chanda, did not take any action on that complaint of the respondent. Even according to the petitioner's case, as already stated, as stated in the election petition that complaint was found baseless and false by the District Superintendent of Police. As no action was taken by the authorities on that complaint, it is not necessary to decide whether that complaint was false or true. Besides, the mere making of such a complaint would not amount to the exercising of undue influence by the respondent. The question, therefore, whether the respondent tried to defame the petitioner or arrest his progress by creating a terror against him in the minds of the voters does not arise for decision.

149. *Issues nos. 32(a) and (b).*—These issues relate to the allegations contained in para (3) (xxxvi) of the election petition and they refer to a false propaganda said to have been made by Shri M. S. Kannamwar against the petitioner at Kurkheda and Chamorshi. The petitioner has tried to prove these allegations by the evidence of Jagadish Salwar (AW-1), Bhagwatiprasad (AW-2), Bhagwanashali (AW-21) and R. P. Tekam (AW-42). All these witnesses are, however, highly interested in the petitioner and they actively worked for his election and they were naturally unhappy over the defeat of the petitioner. It is, therefore, difficult to rely on their version in this respect which sounds like a cock-and-bull story.

150. In this connection Shri Kannamwar (RW-20, examined on commission) has stated that in the public meetings at Kurkheda or at Chamorshi, he did not say that the petitioner wanted to establish a Gond Raj and he did not also say that the public must first verify whether Lal Sham Shah was a Gond or a Muslim and in fact he knew that the petitioner was a Gond. There is nothing in his cross-examination to doubt the veracity of these statements made by him in the examination-in-chief. His statements in this connection are, therefore, reliable and they also receive support from the respondent's other witnesses, Tansing (RW-6) and Kesheo (RW-14). The petitioner has, therefore, failed to prove these issues.

151. *Issues Nos. 33(a) and (b).*—These issues refer to para (3) (xxxvii) of the election petition and they relate to the caution given in the leaflets issued by Barrister Khobragade in Exs. A-16 and A-17 that the Scheduled Caste voters should not allow themselves to be influenced by any candidate for the House of the People. As stated by Barrister Khobragade (AW-13) these leaflets were issued by him in support of the candidates of Samyukta Mahasabha. He also stated that till 14th February 1957, it was not decided by the

Scheduled Caste Federation as to which of the candidates to Lok Sabha and Vidhan Sabha should be supported. This is presumably the reason why the caution was given in those leaflets referred to above. There is also nothing on record to indicate that the said caution was given at the instance of the respondent or any of his workers. Besides, in the very nature of things, this was impossible, because the aim of the Scheduled Caste Federation, as stated by Barrister Khobragade (AW-13), was to defeat the Congress.

152. A similar caution is also found in the letter, Ex. A-11, said to have been addressed by Shrihari Khobragade (AW-15) to Chokha Ramtuke and Pundlik Khobragade. In that letter, as has been already stated, it is further mentioned that the scheduled caste voters should not vote even for the Congress candidates. It is, therefore, clear that the respondent is not responsible for the caution in question given by Barrister Khobragade to the members of the Scheduled Caste through leaflets, Exs. A-16 and A-17. Moreover, what is stated in the leaflets, Exs. A-16 and A-17, is that the Scheduled Caste voters should not allow themselves to be influenced by the canvassing of any candidate for the House of the People and it is not specifically mentioned therein that they should refrain from voting at the election in question. The leaflet Ex. A-16 was issued on 6th February, 1957 and another leaflet Ex. A-17 was issued on 14th February 1957. Thus, they were issued much before the first date of polling in the constituency, namely, 25th February, 1957. It is also necessary to note in this connection that to refrain from voting is also one of the electoral rights. In any case, the respondent, as already stated, was not responsible for such propaganda and it does not amount to corrupt practice of undue influence within the meaning of section 123 of the Act. The issue of the leaflets Exs. A-16 and A-17 had, therefore, no material effect on the result of the election in question.

153. Issues Nos. 34 (a) and (b).—These issues relate to the allegations contained in para (3) (xxxviii) of the election petition, in which it is alleged that Shri Khobragade had demanded Rs. 25,000 from the petitioner for his own election expenses and the petitioner refused to give this amount and thereupon Shri Khobragade wrote that the petitioner had deceived the Scheduled Caste Federation and he thus created misunderstanding amongst the voters against the petitioner. In this connection Vishweshwarrao (AW-43) has stated that on 4th February, 1957 when Shri Khobragade visited his bungalow at Chanda on the request made by him and the petitioner, he there talked to them and Manohar Korpallwar. As he says, they asked Barrister Khobragade for the help of the Scheduled Caste Federation to their election front but Barrister Khobragade, besides making another demand, made a demand of Rs. 25,000 from them as a condition for getting help of the Scheduled Caste Federation. But they did not agree to those conditions and their talks failed. To the same effect is also the evidence of petitioner Lal Sham Shah (AW-44). But the evidence of these two witnesses or of even Manohar Korpallwar (AW-41) is highly interested and it cannot be believed in the absence of independent corroboration.

154. Barrister Khobragade (AW-13), however, stated in this connection that he had no talk with the petitioner or anybody on his behalf regarding the support of the Scheduled Caste Federation to his candidature and he did not issue any direction to the Scheduled Caste Federation workers at Chanda not to help the petitioner in any way in his election. No other evidence has been adduced by the petitioner in this respect and, therefore, in the absence of any independent evidence to the contrary, there is no reason why the evidence of Barrister Khobragade (AW-13) should not be accepted in this respect.

155. It is, however, true that in the letter Ex. A-11 said to have been written by Shrihari Khobragade (AW-15) to Chokhaji Ramtuke and another, it is mentioned that the petitioner has deceived them after he had talks of settlement with them. But from the mere mention of this fact in the letter, it cannot be inferred that Barrister Khobragade had demanded Rs. 25,000 from the petitioner for his own election expenses and that the petitioner refused to give that amount.

156. There is nothing on record to show that Barrister Khobragade himself issued any statement that the petitioner had deceived the Scheduled Caste Federation. There is, however, a leaflet Ex. A-73, issued by the Secretary Chanda Taluka Scheduled Caste Federation containing a statement that there is no authorised candidate, presumably on behalf of Scheduled Caste Federation, for the House of the People and therefore, the voters should not cast their votes for that seat and should return those ballot papers to the Presiding Officers. But from this statement alone, it cannot be inferred that Barrister Khobragade made a demand of Rs. 25,000 from the petitioner for his own election expenses and the petitioner refused to give that amount. There is also nothing in this leaflet to indicate that the petitioner had deceived the Scheduled Caste Federation. There is thus nothing on record to show that Barrister Khobragade created misunderstanding amongst the voters regarding the petitioner. But even assuming that such misunderstanding was created by Barrister Khobragade against the petitioner, the petitioner was free to make a counter propaganda. Moreover, the petitioner has not examined a single voter who could say that he was affected by such propaganda in question by Barrister Khobragade. It cannot, therefore, be said that the election in question is thereby materially affected.

157. *Issues Nos. 35 (a) and (b).*—These issues relate to para (3) (xxxix) of the election petition and they refer to the leaflets Exs. A-1, A-2 and A-3 filed by the petitioner. In this connection, Jagadish Salway (AW-1) has first stated in his evidence (para 2) that the statement contained in leaflet Ex. A-1 is true. That leaflet is issued by Shri Kathade, President of the Chanda District Congress Committee, and it contains a statement that Shri Tumpallwar, Ex. R-2-A, which Jagadishrao Salway (AW-1) had admittedly received. With respect to that notice and to the leaflet Ex. A-1, Jagdish Salway (AW-1) had issued a statement dated 23rd February, 1957, Ex. A-2, and he also published in this connection a letter, dated 14th March, 1954 of Shri Wasekar, President Taluka Congress Committee, Chanda (*vide* Ex. A-3). It is not, however, mentioned in Shri Kathade's leaflet or Shri Wasekar's statement that Jagadish Salway had filed in his nomination paper from Chanda Parliamentary constituency as a dummy candidate for the petitioner. In fact it is admitted by Jagadish Salway (AW-1) that he withdrew his candidature in the election in question in favour of the petitioner. It is, therefore, clear that no statement was issued by Shri R. W. Kathade and Shri Wasekar on behalf of the Congress that Jagadishrao Salway had filed in his nomination paper from Chanda Parliamentary constituency as a dummy candidate for the petitioner. It is, however, true that Shri Kathade had issued a statement that Jagadishrao Salway has been expelled from the Congress and that statement is true.

158. *But even assuming that the statements in question were false and defamatory, the question whether they were calculated to prejudice the general opinion of the voters against Jagadishrao Salway does not arise for consideration in this case, because Jagdishrao Salway himself did not contest the election in question. Such statement could not have any effect on the prospects of the petitioner's election, because they did not relate to the petitioner. It cannot, therefore, be said that the petitioner's election was materially affected by those statement in question.*

159. *Issue No. 37.*—This issue refers to para (3) (xliii) of the election petition. No evidence has, however, been adduced by the petitioner in support of these allegations. The servants of the Janapada Sabha do not come under sub-section (7) of section 123 of the Act. Besides, by my order dated 18th September, 1957, the petitioner was directed to give the dates when school building and school material in question were said to have been used for the furtherance of the election prospects of the respondent but even those particulars were not supplied by the petitioner. Thus, in the absence of those particulars and also in the absence of any evidence on this point, it must be held that the petitioner has failed to prove this issue.

160. *Issues Nos. 38 (a) and (b).*—These issues refer to para (3) (xiv) of the election petition. In this connection Mohammad Wajir Ali (AW-19) has stated that on the polling day at Talodhi Mokasa, Yado Saokar and Sitaram Kamgar, who were the Congress workers, were taking the voters by catching their hands upto the table of the polling officer and they used to take the voters even upto the enclosure where the ballot boxes were kept and he complained about such conduct to the polling officer orally thrice or four times. The copy of his complaint is Ex. A-21 and there is an endorsement of the Presiding Officer on it that Yado Saokar, the agent of the respondent, accompanied blind voters to the polling officer for Legislative Assembly and after that the voter was taken by him (Presiding Officer) to the compartment. It is also stated in the endorsement by the Presiding Officer that there was no objectionable talk by Yado with those voters and he did not even speak to other voters. It is, therefore, clear that the complaint of Mohammad Wajir Ali (AW-19) to the Presiding Officer Talodhi Mokasa against the respondent's polling agent Yado Saokar was false regarding the alleged fact of his going along with the voters inside the polling booth and canvassing within prohibited area. This inference also received support from the evidence of Yadorao (RW-12), who is referred to in the election petition or Yado Saokar.

161. Yadorao (RW-12) has further stated in his evidence that he did not represent to the Presiding Officer that a man named Naktu was Waktya. However, in this connection the Presiding Officer's endorsement on Ex. A-21 is that polling agent concerned is warned not to speak with the voters in the polling station. But only from this endorsement it cannot be inferred that Yadorao (RW-12) was asking voter Naktu to tell his name as Waktya. In any case, the evidence of Mohammad Wajir Ali (AW-19) in this connection is highly unsatisfactory and suspicious and it cannot, therefore, be relied upon. It is not, therefore, proved that Yado Saokar asked one Naktu to tell himself as Waktya. In any case, even assuming that this was so, it is a trifling matter, because ultimately it was the responsibility of the Presiding Officer to properly identify a voter and that fact did not, therefore, materially affect the result of the election of the respondent.

162. *Issues Nos. 40 (a), (b) and (c).*—These issues relate to the allegations contained in para. (3) (first-xlvii) of the election petition. In this connection there is the evidence of Yadorao (AW-9), pleader of Rajur-Manikgad, who was an independent candidate from

Rajura constituency for assembly seat, that about 2 or 3 days before the date of polling he learnt about the fixing of polling stations in Rajura constituency and he got a list thereof and its result was that he could not appoint agents at most of the polling stations. He also stated that because the people did not know where to go for polling, they did not reach the polling stations on the date of polling. But he did not himself make any enquiry in this respect in the office of the Returning Officer and the Assistant Returning Officer at Chanda, though he used to visit Chanda off and on for other purposes. He could not give the names of the voters and he did not note that information regarding the voters who could not go to the polling stations because they did not know where to go for polling. He, however, stated that R. P. Tekam at Chanda was his election agent and was entrusted with the work of getting a list of the polling stations for Rajura constituency. It, therefore, appears that Yadora0 had no personal information regarding the date when the polling stations in Rajura constituency were finally fixed.

163. Coming now to the evidence of R. P. Tekam (AW-42), according to him, by 9th February 1957 the lists of polling stations in Chanda Parliamentary Constituency were not received by him. He then issued a telegram to the Election Commission and Ex. A-12 is a postal copy of that telegram dated 9th February 1957. He has also stated that because the approved list of the polling stations was not received in time, the petitioner could not appoint polling agents at 7 or 8 polling stations. He, however, further admitted in his cross-examination that he used to go to the Election Office at Chanda almost everyday when he used to be at Chanda. It is also significant in this connection that, as stated by him, the petitioner or his election agent Vishweshwarrao never talked to him nor complained to the authorities regarding non-receipt of list of polling stations of Rajura Tehsil.

164. The grievance of the petitioner in this—connection does not appear to be genuine, because, as stated by Shri Anwikar (AW-10), the Election Officer for all the constituencies in the Chanda district, the approval of the Election Commission to the lists of the polling stations was received on 12th February 1957, and when the lists were sanctioned, copies thereof were at once sent out. A letter Ex. A-13 in this connection was drafted by the Assistant Returning Officer Shri Anwikar on 13th February 1957 in which it is written that the approval of the Election Commission to the lists of the polling stations was received on that very day, meaning thereby 13th February 1957, and copies of the lists were being published and sent to the contesting candidates. It, however, appears from that letter that it was despatched to R. P. Tekam on 23rd February 1957. But in this connection Shri Anwikar has stated that to his knowledge, no complaint was received after 12th February 1957 that no lists of polling stations were received.

165. So far as R. P. Tekam, the agent of the—petitioner is concerned, Shri Anwikar has stated that he acknowledged the receipt of the lists of polling stations of Rajura constituency on 13th February 1957, of Saoli and Armori constituencies on 19th February 1957 and of Sironcha constituency on 28th February 1957 and even previous to 28th February 1957 he had obtained lists of polling stations of Sironcha constituency. It is also significant to note in this connection that, as stated by Shri Anwikar (AW-10), the Election Commission did not make any changes in the provisional lists of polling stations submitted to him for sanction. He has further stated that the delay of 10 days in despatching Ex. A-13 to Tekam was immaterial, because the lists of polling stations were already supplied to him and his acknowledgment was taken. As stated by Krishnarao (AW-7) of Gondpripri, about eight or fifteen days prior to the day of polling, he had learnt that Gondpripri was a polling station. It is, therefore, clear that there is no substance in the grievance of the petitioner in this matter. It must, therefore, be held that even if there was late publication of the polling lists, the voters were not misguided thereby. There is also no satisfactory evidence to show as to at what polling stations, polling agents could not be appointed by the petitioner on account of late publication of polling lists. Therefore, it cannot be held in the circumstances of the case that the late publication of the polling lists had materially affected the result of the election. In any case, the respondent or any of his workers was not responsible for late publication of the lists of polling stations and it could not be said that any of them contravened the provisions of section 25 of the Act in this respect.

166. *Issues Nos. 41 (a) and (b).*—These issues refer to the allegations in para (3) (second-xlvii) in the election petition and relate to the pamphlet Ex. A-9 issued by Shri Kathade, President of the District Congress Committee, Chanda. This leaflet mentions the various works performed for the welfare of the people in Chanda district, presumably by the Government, during the regime of Shri M. S. Kannamwar, a Minister of State Government. The grievance of the petitioner in this connection is that the acts of the Parliament and the activities of the Government were interpreted in this pamphlet to be those of the Congress party in order to mislead the voters. It is, however, well to remember in this connection that Shri M. S. Kannamwar was and is a Minister of the Government formed by the Congress party in the Legislature. Therefore, in substance, the acts of Government of the Congress party are the acts of the Congress party in the Legislature and hah-splitting is not possible in such circumstances between the acts of the Congress Government and those of the Congress party.

167. In this connection, Shri Kannamwar (RW-20) stated in his evidence taken on commission that so far as he remembers the facts stated in the pamphlet issued by Shri Kathade regarding the work done by him (Shri Kannamwar) for the Chanda district during the Congress regime as a Minister are correct. There is nothing in his cross-examination to doubt or discredit the veracity of his version in this matter. Even Jagadish Salway (AW-1), the staunch supporter of the petitioner, did not say that the statements contained in pamphlet Ex. A-9 were false. Thus, the petitioner has failed to prove the falsity of the statements contained in Ex. A-9. Therefore, even assuming that such pamphlets issued by Shri Kathade were widely distributed in the Chanda Parliamentary constituency, it cannot be said that they contained false statements and were calculated to misguide the voters and they were distributed with an intention to falsely induce them to vote for the respondent.

168. *Issues Nos. 42(a) and (b).*—These issues refer to the allegations contained in para. (3) (xlvi) of the election petition and they refer to the printed leaflets Ex. A-8 and A-22, purported to have been issued by Shri Kirtimantrao. The complaint of the petitioner in this connection is that the original leaflets corresponding to those printed leaflets were not in fact signed by Kirtimantrao and they were got printed by the Congress canvassers to use Kirtimantrao's influence for respondent's election and the said fraud was practiced for furtherance of the prospects of the respondent's election. In this connection it is necessary to note that the petitioner has not examined Shri Kirtimantrao to show that those leaflets were not issued or authorised by him. His examination was obviously necessary in order to show whether he owned or disowned the publication of those leaflets.

169. The petitioner has, however, examined Baburao alias Ramchandrarao Potdukhe (AW-22). He has stated that the leaflets of the type of Ex. A-8 and Ex. A-22 were printed at his press. He further produced in his cross-examination the manuscript leaflet dated 10th February 1957, Ex. R-10 (corresponding to Ex. A-8), which, according to him, bears the signature of Kirtimantrao and such a pamphlet was printed twice or thrice. Even Vishweshwarao (AW-43) has stated that the signature on Ex. R-10 looks like the signature of Kirtimantrao. Therefore, so far as the original manuscript leaflet Ex. R-10, corresponding to Ex. A-8, is concerned, there can be no doubt that it bears the signature of Shri Kirtimantrao.

170. So far as the original leaflet Ex. R-11, corresponding to printed leaflet Ex. A-22 is concerned, Baburao Potdukhe (AW-22) has stated in his evidence that Shri Appalwar and Shri Kirtimantrao personally visited his press on 6th March 1957 and handed over to him the original manuscript Ex. R-11 for printing and he handed over those leaflets to Appalwar. There can, therefore, be no doubt on that the printed leaflet Ex. A-22 was issued with the authority of Shri Kirtimantrao. It is, however, true, as stated by respondent Shri Swami (RW-18) that the original manuscript leaflet Ex. R-11 does not bear the signature of Shri Kirtimantrao; but according to him it is in the handwriting of his election clerk at Wani. There is no reason to disbelieve this statement in the absence of examination of Shri Kirtimantrao on this point. In this connection the respondent has denied in his cross-examination (para 84) that he procured the printing and distribution of the leaflets Ex. R-10 and Ex. R-11.

171. It is also quite natural that in view of the intimacy between the respondent and Shri Kirtimantrao, who also belongs to the Congress party, such leaflets in question were issued by Shri Kirtimantrao. The intimacy between the respondent and Shri Kirtimantrao is disclosed from the letters Exs. R-14 to R-17 and letter Ex. R-67 addressed to the respondent by Shri Kirtimantrao. Shri Kirtimantrao's election office in the last general election campaign was also, as stated by Shri Swami (RW-18), at the latter's house and his whole correspondence regarding election used to pass through the respondent's clerk who used to send him workers. In such circumstances, it is quite probable that Shri Kirtimantrao got printed and published the leaflets of the type of Ex. A-22. The petitioner has, therefore, failed to prove that any fraud was practised by the respondent or by his workers or by any other person by publishing and circulating the pamphlets in the name of Shri Kirtimantrao for the furtherance of the prospects of the respondent's election.

172. *Issues Nos. 43(a), (b) and (c).*—These issues relate to para. (3) (xlix) of the election petition and refer to the leaflet Ex. A-23. According to R. P. Tekam (AW-42), petitioner's agent, portion marked A in Ex. A-23 is objectionable. As he says, the people in the villages in the Chanda Parliamentary constituency are illiterate and they had blind faith in Mahatma Gandhi and Pandit Jawaharlal Nehru and, therefore, by the objectionable portion in Ex. A-23, they were misled. There is, however, nothing objectionable in fact in the said portion of the leaflet Ex. A-23. All that is stated therein is that signatories of the leaflet want to assure the voters that they would do their duties and discharge their responsibilities and similarly they are determined to act in such a way as to bring luster to the memories of the ideal leaders like Dada Bhai Navroji, Lok Manya Tilak, Mahatma Gandhi and Shapurji Shastri whose memories they would ever cherish and they also considered that to brighten the memories of such leaders is the way to enhance the glory of Pandit Jawaharlal Nehru who is completing the work of the said leaders.

173. Thus, there is nothing in the pamphlet to indicate that the respondent thereby contended that he was representative of late Mahatma Gandhi, the father of Nation, and Jawaharlal Nehru, the Prime Minister of India. Because the respondent was contesting the election as a candidate of the Congress party, there was nothing objectionable in his use of the names of the past and the present leaders of the Congress party in order to tell the voters that he was their follower in politics and wanted to work on their lines. Those names cannot be considered to be national symbols, such as the national flag or national emblem. There is, therefore, no substance in the petitioner's contention in this respect.

174. *Issues Nos. 44 (a) (b) and (c).*—These issues relate to the allegations contained in para. (3) (1) of the election petition and they refer to leaflet Ex. A-10 issued by some weavers. That leaflet contains an appeal to the voters of the weaver community in Chanda district. The objectionable portions therein are, according to R. P. Tekam (AW-42), portions marked A, B, C, D and E. As stated by him, in portion marked C therein, there is a reference to grants to weavers for conducting hand-loom and by the objectionable portions in the said leaflet, it is said, the voters thought that whatever Government had done for them was done by Congress and, therefore, they were misled. This contention cannot be accepted, obviously because the leaflet in question contains an information regarding the first five year plan for the welfare of the cultivators and others as a whole and regarding second five year plan for the weavers in particular. It thus contains a declaration of public policy or promise of public action of the Government regarding weavers. Even Nagpur Pradesh Congress Committee had published a leaflet Ex. R-91 containing an information as to what the Congress Government has done and is going to do for weavers.

175. Such a political policy or programme for the welfare of weavers does not amount to bribery or undue influence within the meaning of sub-section (1) or (2) of section 123 of the Act. Moreover, petitioner has not been able to show that any of the statements contained in the leaflet Ex. A-10 is false. On the contrary, it is admitted by Ramchandra Kayarkar (AW-5) that weaver community is getting benefit of the Weavers' Co-operative Society, the fact mentioned in leaflet Ex. A-10 and according to him, such leaflets were distributed at Chanda. One of the signatories of that leaflet, is Pundlik Tekade (RW-15). As stated by him, that leaflet was issued, because on behalf of Manohar Kotpallwar propaganda was made amongst weavers that the Congress and the Congress Government have not done anything for the benefit of the weavers. Thereafter, as he says, he and his friends, who are Congress workers, convened a meeting of weavers and the people in that meeting were of the view that they should support Congress candidates and according to that view of the people, leaflets of the type of Ex. A-10 were prepared printed and distributed.

176. Thus, as stated by Pundlik (RW-15) that leaflet was not issued at the instance of the respondent, He, however, states that the contents of that leaflet are correct. As further stated by him, the amount of grants mentioned in Ex. A-10 had become known to the signatories thereof from newspapers and people of Chanda Weavers' Co-operative Society also know about those grants and that information was communicated to the signatories of the leaflet by the officers of the Chanda Weavers' Co-operative Society. He was, as he says, for sometime the Honorary Secretary of the Weavers' Co-operative Society, Chanda. In these circumstances, his version regarding the source of information contained in the leaflet Ex. A-10 cannot be disbelieved. In any case, as has been already indicated, the petitioner has failed to prove the falsity of any of the statements contained in that leaflet. Therefore, even assuming that the leaflet Ex. A-10 was issued and distributed amongst the weavers with the consent of the respondent, that act does not amount to any corrupt practice defined under section 123 of the Act.

177. A similar question arose in *Swaminatha Merikondar v. Ramalingam and others* (2 E.L.R. 390) and it is held therein that the offer made by a candidate, of land and cattle to the landless and the poor, irrespective of caste, creed, community and religion, does not amount to corrupt practice of bribery as defined under section 123(1) of the Act, for the giving of the land to the landless and improving the position of the poor in general is in the line with the lessening of inequality of wealth and income which is a commonly accepted aim and object of Statesmen and Governments in most modern democratic countries. Applying this test to the statements contained in Ex. A-10, it is clear that they do not amount to bribery or undue influence under sub-section (1) or sub-section (2) of section 123 of the Act and they were not calculated to induce the voters corruptly.

178. *Issues Nos. 45 (a), (b) and (c).*—These issues refer to the allegations contained in para. (3)(ii) of the election petition and relate to the several leaflets issued by the Nagpur Pradesh Congress Committee, namely, Ex. A-6, Ex. A-7, Exs. A-49 to A-57 and Ex. A-58. The title under which these leaflets have been issued is "*Congress Ne Kay Kele ani Kay Karnar Ahe*" (What Congress has done and what it is going to do). Ex. A-6 is meant for Adiwasis, Ex. A-7 is meant for workers and Ex. A-49 refers to the broad outlines of socialistic society. Ex. A-50 is for Harijans, Ex. A-51 is for women and Ex. 52 is for cultivators. Ex. A-53 refers to the achievements under the first five year plan, while Ex. A-54 refers to the shape of second five year plan. Ex. A-55 is regarding the work done in the sphere of public health, while Ex. A-56 refers to the importance of the Congress party amongst many

political parties in India. Leaflet Ex. A-57 refers to the Government's method of levying taxes and Ex. A-58 relates to the main points in the manifesto of the Congress party. Ex. R-91 is also one of such pamphlets issued by the Nagpur Pradesh Congress Committee for weavers.

179. Similarly, pamphlets were issued by the All India Congress Committee and they are Ex. R-87, which relates to election manifesto, and Ex. R-92 and Ex. R-94 which deal with the subject as to why people should vote for the Congress candidates. Ex. R-95 is a pamphlet entitled "*Gajudhar Ki Kahani*" regarding cultivators and others and pamphlet Ex. R-96 also deals with the same subject. R-97 deals with the subject of India in villages, while pamphlet Ex. R-98 relates to subject of social revolution. The pamphlet Ex. R-99 discusses the employment problem.

180. The leaflets issued by the Nagpur Pradesh Congress Committee, relied upon by the petitioner, thus appear to be on the same lines on which All India Congress Committee made the election propaganda by issuing several pamphlets referred to above. They all relate to the public policy or promise of public action by the Congress party regarding the last general elections to the State Legislatures and to the Parliament. By issuing such pamphlets, the Congress party has exercised legitimate political influence and such political propaganda is permissible for the purposes of the election when candidates are required to place before the electorate as to what they have done and what they are going to do for their welfare if they are elected. Such propaganda cannot, therefore, be regarded in any way objectionable.

181. It is, however, true that in many of these leaflets and pamphlets what the Government of the Congress party has done is shown to have been done by the Congress party itself. As has been already indicated, such a delicate distinction cannot be made, because in democracy there is a Government of a particular party and what is done by that Government can, therefore, be regarded as done by that party. There is, therefore, no substance in the contention of the petitioner that all these pamphlets in question were issued with a corrupt motive. It is, however, true that in those pamphlets assurances are given that several beneficial schemes would be carried out for the voters in case they voted for the Congress candidates; but such assurances are only by way of legitimate persuasion of the voters; and without such assurances there cannot be any election propaganda. There is nothing objectionable in such assurances which constitute only legitimate political propaganda. Such propaganda creates only legitimate political influence and not undue influence. In this connection it is necessary to note that the President, Nagpur Pradesh Congress Committee, had asked Congressmen in leaflet Ex. R-76 not to resort to indecent methods of canvassing. The propaganda in question carried on by several leaflets referred to above, therefore, did not amount to corrupt practice of bribery or undue influence or misrepresentation.

182. *Issues nos. 46(a), (b) and (c):*—These issues relate to para (3) (iii) of the election petition. In this connection, in his statement of particulars dated 25th September, 1957, the petitioner has given eight items of expenditure which, it is said, the respondent has not included in the return of his election expenses. Those items are as follows:—

- “(1) Copying charges of the various voters' lists.
- (2) Ferry charges of respondent's trips to Irai-ghat and Chat after Vyahad.
- (3) Printing charges of pamphlets.
- (4) Various donations given by the respondent including Rs. 300/- for Manora School building, Rs. 600/- for Kohregaoon School building, Rs. 150/- for Dhimar Samaj of Armori, Rs. 8000/- to Scheduled Caste Federation (Shri Khobragade), etc.,
- (5) Wages for preparing voter's cards.
- (6) Taxes for affixing boards on Nazul land.
- (7) Expenses incurred on workers in Armori and Sironcha Legislative constituencies.
- (8) Expenses incurred on polling booth Mandaps in Armori and Sironcha Assembly constituencies.”

183. The petitioner has not, however, adduced any evidence to prove that the respondent has incurred the said expenses. It has been already shown that the petitioner has failed to prove that the respondent gave any donations for Manora or for Kohregaoon school

building or that he paid Rs. 150/- for Dhimar Samaj of Armori or Rs. 8000/- to the Scheduled Caste Federation. If, therefore, the return of the election expenses filed by the respondent does not show any of these amounts, it is because such expenses were not incurred by the respondent; and his return of election expenses cannot be said to be false in this respect. As regards other items also, the respondent's cross-examination in paras 40, 41, 42, 60, 61, 62, 63, 64, 65, 66, 78 and 79 does not show that the return of the election expenses filed by the respondent is in any way false.

184. It is also necessary to note that according to section 77 of the Act, every candidate at an election is required to keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of the publication of the notification calling the election and the date of declaration of the result thereof, both days inclusive. Such account should contain the particulars as may be prescribed and the necessary particulars are stated in rule 131 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956. According to rule 135 *ibid*, the total of the expenditure of which account is to be kept under section 77 of the Act and which is incurred in connection with an election in any one Parliamentary constituency shall not exceed Rs. 25,000 in the case of a single member constituency in any State and the constituency in question was such a constituency.

185. The petitioner has filed a copy of the respondent's election expenses Ex. A-89, which shows the total expenditure of Rs. 12,709/6/6. It is, however, an incomplete copy as it does not contain the copies of the vouchers attached with the return. But the original return along with its vouchers was produced from the office of the Returning Officer before the Tribunal and it was used during the cross-examination of respondent Shri Swami (RW-18), who has stated that his return of election expenses is not false in any respect. He has further stated that being a Congress candidate, he was also required to pay Rs. 2,000 to the Pradesh Congress Committee for propaganda, publicity and for literature etc. That amount of Rs. 2,000 is also shown in his return of election expenses.

186. It is, however, true that as stated by him (para. 60) a number of Congress workers were working for him and other candidates and they were travelling from place to place in Congress conveyances and they were required to stay at different villages at different times. He has also stated that he never had any paid workers except 15 or 16 workers, and, therefore, question of showing expenses of such unpaid workers in the return of election expenses does not arise. He had, however, to pay for the petrol and mobile oil of those conveyances which the workers used for his propaganda. He has further stated that the persons mentioned in para 8 of his statement were not required to incur any expenditure, because conveyances were arranged for them by him and other assembly candidates. It, therefore, appears from the evidence of the respondent that the other expenses, if any, incurred by the workers of the Congress party for his election, which were not authorised by him, were not shown in the return of his election expenses. But such expenses need not be shown in the return of election expenses under the existing Election Law. As has been already indicated, a candidate is required to show in his return of election expenses only those expenses which are incurred or authorised by him or by his election agent.

187. Under the old rule 112 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, however, the expenses incurred by an association, club or society for furthering the prospects of a candidate's election had to be included in the return of his election expenses and, therefore, in view of that rule, a return which did not include such expenses was regarded as a false one, as laid down in *Amirchand v. Surendra Lal Jha and others* (10 E.L.R. 57), which is relied upon by the learned counsel of the petitioner. But that was the law under the old rules and that is not the law now and, therefore, that decision is not applicable to the facts of the present case which is governed by the present section 77 and rules 131 and 135 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956, already referred to above. It cannot, therefore, be said that the return of election expenses filed by the respondent is contrary to the existing provisions of section 77 of the Act or of the rules 131 and 135 *ibid*, simply because expenses, if any, incurred in connection with the election of the respondent by Congress workers and Congress party, which were not authorized by him, have not been shown therein.

188. Thus, in view of all these facts, it must be held that the respondent has not submitted a false return of his expenses and he has not spent any amount over and above the amount shown in his return in connection with the election in question. Thus, he has not incurred or authorised any expenditure in contravention of section 77 of the Act and, therefore, he has not committed corrupt practice within the meaning of sub-section (6) of section 123 of the Act. The question, therefore, whether the respondent has incurred disqualification to be a member of the House of the People for filing a false return of election expenses does not arise.

189. *Issues Nos. 47 (a) to (c).*—Thus, the petitioner has failed to prove that the respondent's election has been procured by any corrupt practice or illegality. Similarly, he has also failed to prove that the result of the election in question has been materially affected by any corrupt practice or illegality. The respondent's election cannot, therefore, be declared void or the petitioner cannot be declared elected in place of the respondent. Consequently, the petitioner is not entitled to any relief or to any costs incurred by him.

190. Thus, the petitioner has failed to establish any of the fortysix alleged corrupt practices and illegalities to the satisfaction of this Tribunal. He has become unsuccessful in making out even a single ground which could be sufficient for vitiating the election in question and all the grounds raised by him for calling the election in question are found to be without any substance. Consequently, the petitioner has totally failed in his formidable endeavour to dislodge the respondent who had won against him the election in question by a large majority of about twenty two thousand votes.

191. The result, therefore, is that the election petition is dismissed. The petitioner will bear his own and the respondent's costs incurred in these proceedings. In view of the fact that the parties presented very keen contest in this case the counsel's fee for each party is fixed upto the maximum of Rs. 15,00/- if certified. The schedule of costs be drawn up accordingly.

T. R. GOSEWADE,

Member,

Election Tribunal, Wardha.

The 7th December 1957.

#### COURT OF THE ELECTION TRIBUNAL, WARDHA

##### Election Petition No. 466 of 1957

Shri Lal Shyam Shah—Petitioner.

Versus

Shri V. N. Swami, Advocate, Chanda—Respondent

##### Copy of Schedule of costs of Election Petition

	Petitioner		Respondent	
		Rs. nP.	Rs. nP.	
1 Stamps for Powers . . . . .		6 00	5 00	
2 Stamps for exhibits . . . . .		37 40	0 00	
3 Pleader's fees allowed and certified . . . . .		1,500 00	1,500 00	
4 Stamps for applications . . . . .		5 00	23 00	
5 Stamps for affidavits . . . . .		5 00	3 00	
6 Service of processes . . . . .		132 75	45 50	
7 Subsistence allowance of witnesses . . . . .		1,249 70	613 25	
8 Commissioner's fees . . . . .		30 45	192 55	
TOTAL		2,966 0	2,382 30	

T. R. GOSEWADE,

Member,

Election Tribunal, Wardha.

The 9th December, 1957.

## BEFORE THE ELECTION TRIBUNAL, WARDHA

Presided over by the Member, Shri T. R. Gosewade, B.A., LL.B., (District and Sessions Judge, Wardha).

ELECTION PETITION No. 446 of 1957

Petitioner.—Lal Sham Shah, S/o Lal Bhagwan Shah, Resident of Panabaras, Tahsil Balod, District Durg (Madhya Pradesh).

*Versus*

Respondents.—(1) Shri V. N. Swamy, Advocate, Chanda, Tahsil and District Chanda.

(2) Shri J. B. Salwe, resident of Chanda, Tahsil and District Chanda.

(3) Shri Bhagwatiprasad Mishra, resident of Chanda, Tahsil and District Chanda.

## COPY OF ORDER

(Delivered on this 30th day of August, 1957).

The petitioner and the respondent No. 1 were the only two contesting candidates at the election of a member to the House of the People from Chanda Parliamentary Constituency at the general elections held in February and March, 1957 and the respondent No. 1 was declared duly elected. Thereafter, when the election petition came up for hearing before this Tribunal for the first time on 10th July, 1957, the returned candidate, respondent No. 1, presented the application raising two preliminary objections and praying for dismissal of the election petition under section 90(3) of the Representation of the People Act, 1951 (Act No. 43 of 1951) hereinafter referred to as the Act. This order relates to the said application and other allied matters.

The two preliminary objections raised by the respondent No. 1 in his application in question (I. A. No. 1) and also in his written statement are as follows. His first objection is that Shri R. W. Kathade was a candidate in the election for the Chanda Parliamentary constituency along with the petitioner and the respondents and his nomination was duly accepted by the returning officer and like the respondents Nos. 2 and 3, Shri Kathade withdrew according to section 57 of the Act. The petitioner, as further contended by the respondent No. 1, has made allegations of corrupt practice against Shri Kathade in paras 3 (xxxix) and 3 (XLVII) of the petition and it was, therefore, obligatory for the petitioner to join Shri Kathade as a respondent to this petition under section 82(b) of the Act. Secondly, it is urged by the respondent No. 1 that the respondents Nos. 2 and 3 were not contesting candidates and no allegations of corrupt practice have been made against them in the petition and consequently, they could not be joined as respondents under section 82(a) or (b) of the Act. The respondent No. 1, therefore, prays that this Tribunal should dismiss the petition under section 90(3) of the Act on the ground that it does not comply with the provisions of section 82 of the Act.

The petitioner has opposed the preliminary objections raised by the respondent No. 1 on the following grounds stated by him in his reply to the respondent No. 1 application:—

- (a) Shri R. W. Kathade was not a duly nominated candidate at the election in question.
- (b) Shri R. W. Kathade, having withdrawn his candidature on 4th February, 1957, was not a candidate within the meaning of section 82(b) of the Act.
- (c) Corrupt practices were committed at the time when Shri R. W. Kathade had already withdrawn his candidature.
- (d) Allegations of corrupt practices have not been made in the petition against Shri R. W. Kathade.
- (e) Allegations of corrupt practices, if any, against Shri Kathade have been made against him not as a candidate but as against any other person.

4. The petitioner has, however, sought leave to add Shri R. W. Kathade as a party under Order, 1, Rule 10, of the Code of Civil Procedure and to amend the petition accordingly or to delete whatever allegations of corrupt practices there may be found against him in the petition and to this effect he has made a separate application (I. A. No. 2). This application is opposed by the respondent No. 1 on the grounds stated in his written reply dated 24th August, 1957.

5. In view of these contentions raised by the respondent No. 1 and the petitioner regarding the preliminary objections in question, the following preliminary issues arise for determination and they are stated below with my findings thereon:—

Preliminary issues	Findings
I. (a) Whether Shri R. W. Kathade was duly nominated candidate in the election in question ?	Yes.
(b) Whether his nomination was duly accepted by the returning officer and whether he withdrew his candidature according to section 37 of the Act ?	I part—Yes. II part—Yes.
II. (a) Whether Shri Kathade's joinder as a respondent to the petition was obligatory ?	No.
(b) Whether allegations of corrupt practice have been made in the petition against Shri Kathade ?	Does not arise. But assuming the finding on issue no. II (a) in the affirmative, the finding on this issue is 'Yes'.
(c) Whether the petitioner should be allowed to join Shri Kathade as a respondent and to amend the petition accordingly ?	Does not arise. But assuming the finding on issue no. II (a) in the affirmative the finding on this issue is 'No.'
(d) Or whether the petitioner should be allowed to omit the name of Shri Kathade from the petition and to make such other alterations in the body of the petition in order to enable the petitioner to proceed with the petition ?	Does not arise. But assuming the finding on issue no. II (a) in the affirmative, the finding on this issue is 'Yes'.
III. Whether non-joinder of Shri Kathade as a respondent to the petition or the joinder of respondents nos. 2 and 3 constitutes non-compliance of section 82 of the Act ?	I part—No. II part—No.

#### *Reasons for the findings*

6. *Preliminary issues Nos. 1(a) and (b).*—In this connection it is pertinent to note that in his reply to the respondent No. 1's application in question, the petitioner has not clearly and categorically denied that Shri R. W. Kathade was a duly nominated candidate in the election in question or that his nomination paper was duly accepted by the returning officer or that he withdrew his candidature according to section 37 of the Act. Petitioner's denial in this respect is thus evasive.

7. Moreover, the respondent No. 1 has filed an affidavit in support of his contention in question. But no counter affidavit is filed by the petitioner, although a direction was given as stated in the order-sheet dated 10th July, 1957 that the petitioner should also file a counter affidavit in reply to respondent No. 1's affidavit, if he thinks that it is necessary to do so. The facts stated in the respondent No. 1's affidavit, therefore, have not been controverted by the petitioner by his affidavit.

8. The respondent No. 1 has also filed in support of his contentions in question affidavit of Shri R. W. Kathade and also some documents. Of the said documents, document Ex. R-1 is a copy of the entry in the electoral roll of mouza Chauda, Vithoba Khidki Ward, for Legislative Assembly and House of the People Constituency. This entry contains the name of Shri R. W. Kathade as an elector. This document, therefore, shows that Shri R. W. Kathade possessed the necessary qualifications for membership of the House of the People, as required by section 4(d) of the Act. The document Ex. R-2 is a copy of nomination paper which shows that Shri R. W. Kathade was nominated as a candidate for election to the House of the People from the Chauda Parliamentary Constituency. It further shows that the said nomination paper was delivered to the assistant returning officer on 23rd January, 1957 and that on scrutiny as required by section 86 of the Act, that nomination paper was accepted by the returning officer on 1st February, 1957.

9. The document Ex R-3 is a copy of the list of validly nominated candidates for election to the House of the People from Chanda Parliamentary Constituency prepared by the returning officer under sub-section (8) of section 36 of the Act. This document contains the name of Shri R. W. Kathade, besides the names of other nominated candidates. The document Ex R-4 is a copy of the list of contesting candidates relating to the election to the House of the People from the Chanda Constituency prepared by the assistant returning officer under section 38(1) of the Act.

10. This document Ex. R-4 does not contain the name of Shri R. W. Kathade and contains only the names of the petitioner and the respondent No. 1 as contesting candidates. It, therefore, shows that Shri R. W. Kathade had withdrawn his candidature within the period prescribed under sub-section (1) of section 37 of the Act. This document and the other three documents (Exs. R-1, R-2 and R-3) are certified copies of public documents which are admissible in evidence under section 77 of the Indian Evidence Act. Thus, by these four documents, it is proved satisfactorily that Shri R. W. Kathade possessed all requisite qualifications for membership of the House of the People and that he was a duly nominated candidate in the election in question and that his nomination was validly accepted by the returning officer and he withdrew his candidature according to section 37(1) of the Act. These facts are also substantiated by the affidavits of the respondent No. 1 and Shri R. W. Kathade. No contrary evidence in the shape of affidavit or documents was adduced by the petitioner. I, therefore, find the preliminary issues Nos. 1(a) and (b) in the affirmative, in favour of the respondent No. 1.

11. *Preliminary issue No. 11(a).*—The counsel have dilated on this issue at great length and, therefore, it is necessary for me to deal with it somewhat extensively. As regards the joinder of the parties to the election petition, section 82 of the Representation of the People Act, 1951, as substituted by Act No. XXVII of 1956, states as follows:

“A petitioner shall join as—respondents to his petition—

- (a) Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and
- (b) any other candidate against whom allegations of any corrupt practice are made in the petition.”

12. It is also necessary to note that in Part VI of the Act in which section 82 is found, there is a definition of the word “candidate” in section 79(b) of the Act. As laid down in section 79 *ibid*, in Parts VI, VII and VIII, unless the context otherwise requires, “candidate” means “a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate.”

13. The second part of the definition of the word “candidate”, stated above, relates to the point of time since when a person should be deemed to have been a candidate and, therefore, that part of the definition is not relevant for the purpose of ascertaining the meaning of section 82 of the Act. For that purpose, the first part of the definition is important and the meaning given therein must be read in section 82 of the Act wherever the word “candidate” or “candidates” occurs in that section, unless the context of section 82 indicates that any other meaning is required to be given to the word “candidate” or “candidates” used therein. Consequently, the statutory meaning of the word “candidate” given in section 79(b) of the Act should be read in section 82 of the Act while interpreting the word “candidate” or “candidates” in that section.

14. In this view, the word “candidate” used in section 82 of the Act means a person who has been or claims to have been duly nominated as a candidate at any election. Accordingly, the words “at any election” must be read immediately after the word “candidate” or “candidates”—wherever these words occur in section 82 of the Act. It is, therefore, necessary to interpret the words “at any..... election” and to determine their true meaning. The words “at the election” as used in section 82 of the Act, as it stood before it was substituted by the second amendment of 1956, were interpreted in *Sitaram v. Yograj Singh* (A.I.R. 1953 Bombay 293) by Division Bench consisting of the Honourable Mr. Justice Chagla, the Chief Justice and the Honourable Mr. Justice Dixit of the Bombay High Court. As stated in that case, the object of section 82 is that all parties who were concerned with the actual election and contested the election should be before the Tribunal. As further observed therein, a person who did not contest the election and who withdrew from the fight does not stand in the same position as candidates who not only were duly nominated but who were candidates at the election. It is therefore, laid down therein that

a candidate who though duly nominated withdraws his candidature in consequences of which his name does not appear in the list of valid nominations need not be joined as a party to an election petition.

15. In this connection, the following observations made in that case at page 296 (*Sitaram v. Yograjsing*), cited above, are apposite:

"If the intention of the Legislature was that the petitioner should join as parties all candidates whose nominations were accepted, irrespective of the fact whether they contested the election or not and irrespective of the fact whether they were candidates at the election or not, it is difficult to understand why the expression "candidates who were duly nominated" is qualified by the expression "at the election". It is clear that there is a vital distinction between a candidate for an election and a candidate at an election. You are a candidate for an election long before the election takes place. You may cease to be a candidate for that election and you may not be a candidate at the election. "At the election" emphasises the point of time when the election takes place. It emphasises the fact that you are a contestant at the election and that the voters have a right to vote for that candidate. It also emphasises the fact that the candidate has not withdrawn and has no right to withdraw and in law he must be considered to be a person who is contesting the election along with other candidates. The distinction between a candidate "for an election" and "at an election" is brought out by section 32. That section provides that any person may be nominated as a candidate for an election fill a seat in any constituency if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act. Therefore, at that stage a person is nominated as a candidate for an election. Then section 33 provides for presentation of nomination paper and requirements for a valid nomination. Section 36 provides for the scrutiny of nominations, and section 37 provides for the withdrawal of — candidature. After that time is passed section 38 provides for the Returning Officer preparing and publishing a list of valid nominations. Once this has been done and once the right of the candidate to withdraw has disappeared, then the candidate becomes a candidate at an election and it is this candidate who has got to be made a party to the petition. If the other view was accepted, the view pressed for by Mr. Patwardhan, it is difficult to understand how a candidate who has withdrawn from the contest is in any better position than any other elector; he has no rights other than the rights enjoyed by any elector; and why the Legislature should have taken the view that a candidate who has withdrawn should be made a party to the election petition is difficult to understand."

16. This view is followed in *Sheo Kumar v. T. G. Oak* (A.I.R. 1953 All. 633) in which it is laid down that the words "at the election" have reference to the actual time when the voting takes place and, therefore, a candidate who withdraws his candidature under section 37 of the Act, cannot be regarded as a candidate who was duly nominated at the election and hence it is unnecessary to implead him as a party to an election petition.

17. It is, however, true that a contrary view has been taken in *Mohammed Umair v. Ram Charan Singh* (A.I.R. 1954 Patna 225). According to that view the expression "candidates for election" and "candidates at the election" have been used in the Act indiscriminately and without any idea of drawing a distinction between the connotation of these two expressions. As further stated therein, the expression "candidates at the election" does not necessarily mean only those candidates who were concerned with the actual election and who contested the election and that expression occurring in section 82 covers the case of those candidates who had withdrawn their candidature after nomination.

18. The learned counsel of the respondent no. 1 has urged that the view of the Bombay High Court and the Allahabad High Court in the cases already quoted, has been disapproved by the Supreme Court in *Jagan Nath v. Jaswant Singh* (A.I.R. 1954 S.C. 210) and *Bhikaji Keshao v. Brijlal Nandlal* (A.I.R. 1955 S.C. 610). After considering these Supreme Court's decisions, I find that this contention of the learned counsel of the respondent no. 1 is incorrect and it cannot, therefore, be accepted by this Tribunal.

19. In fact, the Delhi Election Tribunal in Election Petition No. 10 of 1952, decided on 11th November 1952, which gave rise to the case of *Jagan Nath v. Jaswant Singh* (A.I.R. 1954 S.C. 210), held that one Baijnath whose nomination had been accepted but who had withdrawn his candidature subsequently, was not a necessary party but he was impleaded as a proper party by that Tribunal which further held that non joinder of Baijnath was not

fatal to the petition. The decisions of that Tribunal and of the Punjab High Court relating to that matter were found to be correct by the Supreme Court in *Jagan Nath v. Jaswant Singh* (A.I.R. 1954 S.C. 210) on the following grounds:

- (1) That the array of parties as provided by section 82 (old) is not final and conclusive and that defect can be cured.
- (2) If any party is omitted from the list of respondents, such a defect is not fatal and the Tribunal is entitled to deal with it under the provisions of the Code of Civil Procedure Order 1, Rules 9, 10 and 13.
- (3) That the provisions of section 82 are directory like the provisions of Order 34, Rule 1 of the Code of Civil Procedure and that non-compliance with the provisions of section 82 (old) is not fatal to the petition and the matter has to be determined in accordance with the Rules of the Code of Civil Procedure which have been made expressly applicable.

20. It is, however, true that reference was made in that case to *Sitaram v. Yograjising* (A.I.R. 1953 Bombay 293). But it was in connection with the question of allowing a defective verification to be amended and not in connection with the question of joinder of parties as required by old section 82. Therefore, in my opinion, the view of the Bombay High Court that it was not necessary to join a withdrawn candidate as a respondent in the election petition under section 82 of the Act was not disapproved by the Supreme Court.

21. Coming now to the decision of the Supreme Court in *Bhikaji Kesheo v. Brijlal Nandlal* (A.I.R. 1955 S.C. 610), which arose out of the judgment of the Election Tribunal, Akola, which held that the withdrawn candidates were also necessary parties, the Supreme Court in that case found it unnecessary and academic to go into that judicial controversy, having regard to the previous decision of that Court in *Jagan Nath v. Jaswant Singh* (A.I.R. 1954 S.C. 210). Following their previous decision, the Supreme Court held in that case that even if the necessary parties other than the returned candidate have not been impleaded, the petition was not liable to be dismissed "in limine" on that sole ground but that it was a matter to be taken into consideration at the appropriate stage with reference to the final result of the case.

22. It is, however, true that in *Bhikaji Kesheo v. Brijlal Nandlal* (A.I.R. 1955 S.C. 610), the Supreme Court observed that if they were called upon to settle the controversy as regards joinder of parties, they would prefer to base their decision not on any meticulous construction of the phrase "at the election" but on a comprehensive consideration of the relevant provisions of the Act and of the rules framed thereunder and of the purpose, if any, of the requirement of section 82 as to the joinder of parties other than the returned candidate. These observations cannot, however, be taken to mean that the view of the Bombay and Allahabad High Courts on the point in question was disapproved by the Supreme Court. In fact, the Supreme Court did not decide the question in any of these two decisions cited above, and therefore, it is incorrect and misleading to argue that the view of the Bombay and Allahabad High Courts on the point in question has been disapproved by the Supreme Court. The fact, therefore, remains that the view of the Bombay and Allahabad High Courts on the point in question, which has been already indicated, is not disapproved by the Supreme Court and, therefore, that view can still be followed.

23. The scheme of the Act more or less remains the same even after the changes introduced in the Act by Act No. XXVII of 1956. That scheme and the relevant provisions of the Act, as they were before the amendments were introduced by the amendment Act No. XXVII of 1956, have been examined in *Sitaram v. Yograjising* (A.I.R. 1953 Bombay 293) and *Shro Kumar v. P. G. Oak* (A.I.R. 1953 All. 633). The purpose of the joinder of the parties other than the returned candidate has also been examined in these two cases. Therefore, for the reasons given therein, I prefer to follow the view expressed in these two cases as regards the meaning of the words "at the election" in section 82 as it stood before the amendment of 1956. The view of the Patna High Court in *Mohammad Umair v. Ram Charan* (A.I.R. 1954 Patna 225) that the expressions "candidate for election" and "candidates at the election" have been used in the Act indiscriminately is one which, with due deference to the Honourable Judges who decided the case, I find difficult to accept.

24. The better view appears to be, as observed by the Bombay High Court in the case cited above, that there is a vital distinction between "candidates for the election" and "candidates at the election" and the Legislature purposely used the words "for an election" in one part of the Act (*vide* section 32) and "at the election" in another part of the Act. Therefore, following the view of the Bombay and Allahabad High Courts, I find that the words "at the election" have reference to the actual time when the voting takes place and, therefore, these parties who were concerned with the actual election and who contested the election, were necessary parties to the election petition according to section 82, as it stood before the second amendment of 1956.

25. This interpretation applies even to present section 82 of the Act, although it now stands recast and has undergone considerable change by virtue of the amendments Act No. XXVII of 1956. The main reason for this conclusion is that the words "at any election"

used in the definition of "candidate" given in section 79(b) *ibid* have to be necessarily read, as already indicated, in section 82 immediately after the words "candidate" or "candidates" used therein.

26. It is, however, contended by the learned counsel of the respondent no. 1 that this interpretation cannot be applied to the present section 82 of the Act, because according to this section the candidates have been divided into three categories, namely, (1) contesting candidates, (2) returned candidates and (3) any other candidate; and the third category applies to candidates who have withdrawn after nominations have been validly accepted. But this argument does not appear to me to be sound. According to the plain reading of the section, joinder of respondents to the election petition depends on the kind of relief claimed by the petitioner. Under section 84 of the Act, a petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.

27. Section 82 of the Act at the outset lays down that a petitioner shall join as respondent to his petition, where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner. The section then considers the joinder of respondents with reference to the petition where no such further declaration is claimed and where only a declaration that the election of all or any of the returned candidates is void, is claimed. With reference to such relief the section in its second part lays down that the petitioner shall join as respondents to his election petition all the returned candidates and any other candidate against whom allegations of any corrupt practice are made in the petition. Thus, the words "any other candidate" found in section 82 have been used to indicate the distinction with reference to the immediately preceding words "all the contesting candidates" and "all the returned candidates" and in this view they refer to any contesting candidate against whom allegations of any corrupt practice are made in the petition other than the returned candidates.

28. In this way present section 82 of the Act really divides the candidates, who are required to be joined as respondents to the election petition, only into two categories according to the nature of the relief claimed by the petitioner. It is true that there is semi-colon (;) before the last word 'and' in clause (a) of the section. But as has been held by the Privy Council in *L. P. E. Pugh v. Ashutosh Sen* (I.L.R. 8 Patna 516), which involved the interpretation of Article 48 of Schedule I of the Limitation Act, the provisions of any Statute should be read without the commas inserted in the print. Following that decision it was held in the *Indian Cotton Company Ltd. v. Hari Poonjoo* (I.L.R. 1937 Bombay 763) that in considering the plain words of a section of an Act, punctuation should not be relied upon. The same view is adopted in *Mansa Ram v. Ancho* (I.L.R. 55 All. 700). Thus, if semi colon (;) before the last word 'and' in clause (a) of section 82 of the Act is ignored, as it ought to be ignored, there is no difficulty in accepting the interpretation that the section divides the candidates mentioned therein into two classes only, as indicated above. Thus, the classification of candidates made in this section is of two kinds, namely, contesting candidates and returned candidates and the words "any other candidate" used in clause (b) *ibid* indicate any contesting candidate against whom allegations of corrupt practice are made in the petition, as distinguished from the returned candidates and all contesting candidates.

29. This view receives support from the decision in *Steward v. Brojendra Kishore* (A.I.R. 1939 Calcutta 628) in which following the Privy Council decision in *Chhajwani v. Neki* (I.L.R. 3 Lahore 127), it is laid down that the expression "any other sufficient reason" occurring in Order 47, Rule 1, of the Code of Civil Procedure means any other sufficient reason analogous to those specified immediately previously, that is to say, to excusable failure to bring to the notice of the Court new and important matter.

30. This interpretation of the new section 82 of the Act appears to have been adopted by the Election Tribunal Allahabad in its order dated 30th July 1957 in the Election Petition Case No. 381 of 1957, *Shri Sitaram Khemka v. Shri-Jawaharlal Nehru and others*, which was a case of non-joinder of some of the contesting candidates as respondents. (A copy of that order was supplied to the Tribunal by the respondent no. 1). In that order of the Allahabad Tribunal, it is observed that the petitioner having claimed the relief that he himself should be declared as duly elected was required by the provisions of section 82 of the Act to join as respondents all the contesting candidates other than himself and he has claimed a declaration that he himself has been duly elected without joining as respondents the four other contesting candidates. In my opinion, this observation of the Allahabad Election Tribunal supports my interpretation of the present section 82 of the Act.

31. In this view of new section 82 of the Act, the contention of the learned counsel of the respondent no. 1 that the expression "any other candidate" in section 82(b) refers to withdrawn candidate, cannot be accepted. That expression, as already stated, refers to a contesting candidate, that is to say, a person who was a candidate at the poll and who fought the election. The interpretation of the words "at the election" made by the Bombay

and Allahabad High Courts in the two cases already cited, therefore, applies on all fours even to the present section 82 of the Act. I, therefore, find that the joinder of Shri R. W. Kathade, who was a duly nominated candidate at the election in question and who withdrew his candidature, is not obligatory under section 82 of the Act.

32. *Preliminary issue No. II(b).*—In the view of the case which I have taken as regards preliminary issues no. II(a), the preliminary issue nos. II(b) does not arise for decision. Assuming, however, that Shri R. W. Kathade's joinder as respondent in the election petition is necessary under the present section 82(b) of the Act, it would be necessary to give a finding on this issue. In this connection, it would be enough to say that paragraph 3(XXXIX) and 3(XLVII) of the election petition show that they contain allegations of corrupt practice against Shri R. W. Kathade. But it has not been mentioned in those paragraphs of the election petition that those allegations were made against Shri R. W. Kathade as a candidate.

33. *Preliminary issues Nos. II(c) and (d).*—These preliminary issues do not also arise for decision in view of the finding that Shri R. W. Kathade's joinder as a respondent to the petition is not necessary according to the new section 82 of the Act. Assuming, however, that his joinder as a respondent is necessary, these issues would arise for decision. I am, therefore, considering these issues under that assumption. As regards the question of amendment of the election petition by allowing the petitioner to join Shri R. W. Kathade as respondent, is concerned, it is necessary to consider whether there is any penalty laid down in the Act for non-joinder of respondents mentioned in section 82 of the Act which provides for joinder of necessary parties. There was no such penalty under the Act, as it stood before the amendment of 1956. But by the Amendment Act XXVII of 1956, such penalty is provided in sub-section (3) of section 90. Before the amendment of 1956, non-compliance of section 82 was not mentioned either in section 85 which referred to the powers of the Election Commission to dismiss the petition or in section 90(4) which referred to the powers of the Tribunal to dismiss the election petition. The amendment of 1956, however, has provided in section 85 that for non-compliance of section 82, the Election Commission shall dismiss the petition; but before such dismissal, the Election Commission is required to give the petitioner an opportunity of being heard. Similarly, the amending Act XXVII of 1956 has introduced the penalty for the non-compliance of section 82 in section 90(3) in which the word "shall" is also used by the said amendment Act in place of the word "may" which section 90(4) of the Act contained before the amendment of 1956.

34. Thus, a penalty is now provided in the present section 85 and sub-section (3) of section 90 of the Act for non-compliance of the new section 82 of the Act. In view of this penalty for non-compliance of present section 82 of the Act, both sections 82 and section 90(3) of the Act must be considered as mandatory. This view receives support from the decision of the Supreme Court in *Jagan Nath v. Jaswant Singh* (A.I.R. 1954 S.C. 210) in which it is laid down that it is one of the rules of construction that a provision like section 82 (old) of the Act is not mandatory, unless non-compliance with it is made penal. The non-compliance of new section 82 of the Act is now made penal by virtue of the penalty provided for it in section 90(3) of the Act and by virtue of the word "shall" introduced in it by amendment Act XXVII of 1956. It is, therefore, clear that both section 82 and section 90(3) of the Act are now mandatory.

35. In view of the mandatory nature of section 82 and section 90(3) of the Act, it appears that the power of the Tribunal under Order 1, Rule 10, of the Code of Civil Procedure, is taken away, only so far as the joinder of parties mentioned in new section 82 of the Act is concerned. Now, Order 1, Rule 10, of the Code of Civil Procedure is, therefore, required to be read subject to the contrary provisions of section 82 and section 90(3) of the Act.

36. This view receives support from the decision of the Supreme Court in *Harish Chandra v. Triloki Singh* (A.I.R. 1957 S.C. 444) in which the question as regards the scope of amendment with reference to the provisions of the Act, as it stood before the amendment of 1956, was considered. As laid down therein, the true scope of the limitation enacted in section 90(2) on the application of the procedure under the Civil Procedure Code, is that when the same subject-matter is covered, both by a provision of the Act or the rules and also of the Civil Procedure Code and there is a conflict between them, the former is to prevail over the latter. As further laid down therein, this limitation cannot operate when the subject-matter of the two provisions is the same. Applying this principle, laid down by the Supreme Court, to the question of amendment as regards joinder of parties to the election petition, it is clear that the provisions of the Act contained in section 82 and section 90(3) of the Act, which in effect lay down that the parties mentioned in section 82, if not joined in the petition at the time of its presentation, shall not be allowed by the Tribunal to be added as respondents, at any stage of the trial, are conflicting to that extent with the provisions of Order 1, Rule 10, of the Code of Civil Procedure. To the same effect is the provisions of section 85 of the Act so far as the Election Commission is concerned.

37. Thus, only to the extent indicated above, there is a conflict between the provisions of section 82 and section 90(3) of the Act on the one hand and the provisions contained in Order 1, Rule 10, of the Code of Civil Procedure on the other and, therefore, the said provisions of the Act which relate to the joinder or non-joinder of necessary parties should prevail over the provisions of Order 1, Rule 10, of the Code of Civil Procedure, only so far as the joinder or non-joinder of necessary parties is concerned. Assuming, therefore, that Shri R. W. Kathade is a necessary party under section 82 of the Act, I find that the petitioner cannot be allowed to join Shri R. W. Kathade as a respondent and only to that extent the amendment of the petition cannot be allowed.

38. But the question of amendment of the petition by omitting the name of Shri R. W. Kathade from the body of the petition or by deleting the allegations of corrupt practice made against him in the petition, stands on a different footing. That is not a subject-matter of provisions of section 82 or section 90(3) of the Act. This subject-matter is dealt with in respect of the particulars of any corrupt practice alleged in the petition in the present subsection (5) of section 90 of the Act. Before the amendment of 1956, this subject-matter was dealt with by section 83(3) of the Act. Therefore, so far as the amendment or amplification of any corrupt practice alleged in the petition is concerned, it is now governed by section 90(5) of the Act and when the amendment sought is one of particulars, this provision will apply to the exclusion of any Rules of the Civil Procedure Code. This provision is, therefore, supplementary to the provision of Order 6, Rule 17, of the Code of Civil Procedure with which it does not conflict.

39. This view receives support from the decision in *Harish Chandra v. Triloki Singh* (A.I.R. 1957 S.C. 444) in which it is laid down that section 83(3) (old) relates only to amendment of particulars and when the amendment sought is one of the particulars, that section will apply to the exclusion of any Rule of the Civil Procedure Code which might conflict with it, though it does not appear that there is any such Rule. In that case, it is further laid down that where the amendment relates not to particulars but to other matters, that is a field not occupied by section 83(3) and Order 6, Rule 17, of the Code of Civil Procedure will apply. It is also laid down therein that the application of Order 6, Rule 17, of the Code of Civil Procedure to the proceedings before the Tribunal is not excluded by section 83(3) (old) and the Tribunal has power in appropriate cases to direct amendment of the petition under Order 6, Rule 17, of the Code of Civil Procedure; but that power cannot be exercised so as to permit new grounds or charges to be raised or to so alter its character as to make it in substance a new petition, if a fresh petition on those allegations will be barred.

40. The principles laid down in this decision of the Supreme Court apply even to the provisions contained in section 90(1) and 90(5) of the Act as they stand after the amendment of 1956. Therefore, the contention of the learned counsel of the respondent No. 1 that even in respect of amendment of particulars of corrupt practice or other facts alleged in the petition, the power of the Tribunal is taken away by the penalty of dismissal of the election petition, provided in section 90(3) for non-compliance of section 82 of the Act, cannot be accepted. He has urged in this connection that if the petitioner is allowed to omit from the petition the particulars of corrupt practice alleged in the petition against Shri R. W. Kathade, provisions of section 90(3) of the Act will be rendered nugatory. But this argument appears to me to be fallacious, obviously because section 90(3) and section 90(5) deal with two different subject-matters and there is no conflict between these two provisions. Section 90(3) refers, *inter alia*, to non-compliance of section 82 which deals with necessary parties to the petition while section 90(5) and Order 6, Rule 17, of the Code of Civil Procedure deal with amendment of particulars and other allegations in the petition. Thus, these two sets of provisions relate to two separate subject-matters and there is no conflict between them.

41. The learned counsel of the respondent No. 1 relies in support of his contention in this connection on *Tukaram v. Hari* (I.L.R. 28 Bombay 601), *Mathura Mohan Saha v. Ram Kumar Saha and Chittagong District Board* (I.L.R. 43 Calcutta 790), *Nazir Ahmad v. King-Emperor* [A.I.R. 1936 Privy Council 253 (2)], *Janimal Budharmal v. Girdharidas Pokhardas* (1956 N.L.J. 578), *Stewart v. Brojendra Kishore* (A.I.R. 1939 Calcutta 628 at page 632) in *Re C. P. Motor Sprit Act* (A.I.R. 1939 F.C. 1), *Lakshpatram v. Baharilal* (A.I.R. 1939 F.C. 42) and *Tika Ramji v. State of U.P.* (1956 Supreme Court 676). But these authorities relate to the question of jurisdiction and conflict of provisions with reference to enactments other than the Representation of the People Act 1951, and the Code of Civil Procedure and, therefore, they are not helpful for the purpose of interpretation of the provisions of the Act which are required to be interpreted in this case.

42. The learned counsel for the respondent No. 1 also relies on *Ramkrishna v. Thakur Dausingh* (I.L.R. 1953 Nagpur 772). But in that case the High Court dealt with the question of their jurisdiction to interfere with an election matter. That decision is, therefore, on an entirely different point and it does not help the respondent No. 1 in any way. Reliance is also placed on behalf of the respondent No. 1 on *Rattan Anmol Singh v. Ch. Atma Ram*

(A.I.R. 1954 S.C. 510) and *Durga Shankar v. Raghurai Singh* (A.I.R. 1954 S.C. 520); but these cases also deal with a subject matter different from that which is being dealt with in this case. They are not, therefore, useful for interpreting the provisions of the Act in question.

43. The contention of the learned counsel of the respondent No. 1 that under the Act as it now stands, the Tribunal has no power of to allow the petitioner to delete from the election petition the name of Shri Kathade or the particulars of corrupt practices alleged against him is repelled by the decision of the Court in *Harish Chandra v. Triloki Singh* (A.I.R. 1957 S.C. 444) which specifically deals with such a contention with reference to the provisions of the Act as they stood before the amendment of 1956, to which reference has already been made above.

44. If, therefore, the law empowers the Tribunal to allow amendment by deleting the allegations of corrupt practice alleged in the petition against Shri Kathade either under section 90(5) of the Act or Order 6, Rule 17, or the Code of Civil Procedure, the petitioner can be allowed to do so to enable him to bring his petition in conformity with the provisions of section 82 of the Act, provided he makes out a case for allowing such amendment. The Act has given such power to the Tribunal and this is clear from the fact that the power of the Tribunal as regards amendment of the matters contained in section 83 is not taken away by section 90(3) of the Act.

45. A similar question of amendment arose in *Sitaram v. Yograj Singh* (A.I.R. 1953 Bombay 293) with reference to the provisions of the Act, as they stood before the amendment of 1956, and it was held therein that there was no statutory obligation upon the Tribunal to dismiss a petition which did not comply with the provisions of section 83. It is further laid down therein that the very fact that the Legislature has left it to the discretion of the Tribunal clearly goes to show that the Legislature conferred the power upon the Tribunal in proper cases to amend a petition and to bring it in conformity with section 83, so that it need not be dismissed. This decision is followed in *Mahadeo v. Jwalaprasad and others* (I.L.R. 1953 Nagpur 963). Considering these authorities and the decisions of the Supreme Court in *Harish Chandra v. Triloki Singh* (A.I.R. 1957 S.C. 444) with reference to the relevant provisions of the Act, as they stand after the amendment of 1956, I find that the amendment of the petition by omitting the allegations of corrupt practice against Shri Kathade can be allowed. Such an amendment cannot be said to have been sought *malafide* and will not, in my opinion, cause any prejudice whatsoever to the respondent No. 1 and on the contrary it will reduce to that extent his burden of contesting the petition and, therefore, it should be allowed. But this question of amendment, as I have already stated, does not arise for decision, because in my view Shri Kathade's joinder as respondent to the election petition is not necessary.

46. *Preliminary issue No. III.*—In view of the reasons which have been already stated and in view of my finding that Shri Kathade's joinder is not necessary under section 82 of the Act, as it now stands, it follows that the non-joinder of Shri Kathade as a respondent to the election petition does not constitute non-compliance of present section 82 of the Act. The question which now arises for decision is whether the joinder of respondents 2 and 3 constitutes non-compliance of section 82. According to the allegations in the election petition, the respondents Nos. 2 and 3 after their nomination for election in question withdrew their nomination and thereafter there was a straight light between the petitioner and the respondent No. 1. In the view which I have taken regarding joinder in the election petition of persons who had withdrawn their candidature, it was not necessary for the petitioner to join respondents Nos. 2 and 3 in the election petition. However, their joinder can be considered as a mere surplusage as observed in *Sitaram v. Yograj Singh* (A.I.R. 1953 Bombay 293) and no further question can arise as to the jurisdiction of the Tribunal.

47. Joinder of such respondents was treated as over joinder of parties and not fatal to the trial of the petition in *S. Mula Singh v. Ch. Mangu Ram and others* (Vol. II Indian Election Cases by Doabia, at page 268) by the Election Petitions Commission, East Punjab. Thus, this decision also supports the view that joinder of respondents 2 and 3 who are not necessary parties to the election petition does not amount to non-compliance of section 82 of the Act.

48. In this connection it is urged by the learned counsel of the respondent No. 1 that even the joinder of the parties not contemplated by section 82 of the Act amounts to non-compliance of that section and, therefore, the petition is liable to be dismissed *in limina* under section 90(3) of the Act. In support of this contention, he relies on the cases which have been referred to in paras 41 and 42 above; but those cases, as has been indicated, refer to enactments and deal with subject-matters different from the provisions of the Act and

the subject-matter which are being discussed here and, therefore, they are not helpful. In this respect, it is significant to note that although the Delhi Election Tribunal had allowed one Bajinath to be impleaded as a proper party but not as a necessary party, the Supreme Court did not think it fit to interfere with that order in *Jagan Nath v. Jaswant Singh* (A.I.R. 1954 S.C. 210). Some observations of the Supreme Court in that case are noteworthy in this connection:

"It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. In cases where the election law does not prescribe the consequence or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the Tribunal entrusted with the trial of the case is not affected.

49. It is also necessary to note the section 82 or any other section of the Act does not lay down that any person not mentioned in section 82 shall not be joined as respondent to the election petition. If, therefore, such a person is joined as a respondent it cannot be said that it contravenes section 82 of the Act. Section 82 deals only with necessary parties and it does not deal with proper or unnecessary parties. Therefore, the power of the Tribunal to deal with the question of proper or unnecessary parties under the provisions of Order 1, Rule 10, of the Code of Civil Procedure is not taken away by the Act. Consequently, the only possible view in this connection in my opinion, is to treat the joinder of respondents, who were not necessary parties, as mere surplusage, as was done in *Sitaram v. Yograj Sing* (A.I.R. 1953 Bombay 293). I, therefore, find that the joinder of respondents Nos. 2 and 3 in the election petition does not constitute non-compliance of section 82 of the Act.

50. The view strenuously urged by the learned counsel of the respondent No. 1 as regards the effect of joinder of respondents Nos. 2 and 3 in the election petition and in respect of the question of striking out the allegations of corrupt practice made in the petition against Shri Kathade is too technical and it cannot be accepted in the interest of substantial justice in the matter of testing the purity of election, which is the main purpose of the Act. In this connection, this Tribunal wishes to emphasise that the Supreme Court in *Pratap Singh v. Shri Krishna Gupta* (A.I.R. 1956 S.C. 140) has deprecated the tendency of the Courts towards technicality. As further observed therein, it is necessary to note that it is the substance that counts and must take precedence over mere form. Some rules are vital and go to root of the matter and they cannot be broken while others are only directory and a breach of them can not be overlooked, provided there is substantial compliance with the rules read as a whole and no prejudice occurs. It is also necessary to bear in mind that the matter should be determined by exercising a nice discrimination and by sorting out one class from the other along broad based and commonsense lines.

51. One more aspect of the question is required to be considered and that aspect is whether respondent Nos. 2 and 3, who are not necessary parties to the election petition under section 82 of the Act, should be allowed to remain as respondents or whether their names should be struck out from the array of the respondents in the election petition. This matter is governed by section 90(1) of the Act, as it now stands, read with Order 1 Rule 10(2), of the Code of Civil Procedure. Under that provisions of the Civil Procedure Code the name of any party improperly joined can be struck out at any stage of the proceedings, either upon or without the application of either party. This power of the Tribunal, which is vested in it by section 90(1) of the Act, is not, in my opinion, affected by section 82 or section 90(3) or any other provisions of the Act. I am, therefore, of opinion that the Tribunal can order the striking out of the names of respondents Nos. 2 and 3 from the election petition.

52. It is now necessary to consider whether in the circumstances of the case the names of the respondents Nos. 2 and 3 should be struck out from the election petition. The position as concerned, is the same as that of that of Shri R. W. Kathade, obviously because all these three persons had withdrawn their nomination. If, therefore, Shri R. W. Kathade is not joined by the petitioner as a respondent, there is no reason why respondents Nos. 2 and 3 should have been joined. Their joinder appears to have been made with some ulterior motive and probably with a view that by their written statements they should support the petitioner. Their joinder, therefore, might be prejudicial to the respondent No. 1. In these circumstances, I think it will be fair and proper to strike out the respondents Nos. 2 and 3 from the array of the parties and I find accordingly.

53. The result, therefore, is that the application of the respondent No. 1 for dismissing the election petition *in limine* under section 90(3) of the Act, on the ground of non-compliance of section 83 of the Act, fails and it is accordingly dismissed. The petitioner is, however, directed to amend the election petition by striking out from the array of parties

the names of respondents Nos. 2 and 3 and the body of the election petition should also be accordingly amended by striking out the words "respondent No. 2" or "respondent No. 3" wherever they occur and by substituting therefor only the names of such persons.

54. As regards the costs incurred by the parties, except respondents Nos. 2 and 3, in connection with the preliminary issues decided by this order, it is directed that they shall abide the final result of the election petition.

(Sd.) T. R. GOSEWADE,  
Election Tribunal, Wardha.

*The 30th August, 1957.*

[No. 82/466/57/791.]

By Order,

A. KRISHNASWAMI AYYANGER, Secy.

